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Rules, Regulations, Orders

TITLE 7—AGRICULTURE

SUGAR DIVISION

PART 802—SUGAR DETERMINATIONS

DETERMINATION OF FARMING PRACTICES TO BE CARRIED OUT IN CONNECTION WITH THE PRODUCTION OF SUGARCANE DURING THE CROP YEAR 1939–40 FOR PUERTO RICO

Pursuant to the provisions of Section 301 (e) of the Sugar Act of 1937, I, H. A. Wallace, Secretary of Agriculture, do hereby make the following determination:

§ 802.43b *Farming practices in connection with the production of the 1939–40 crop of sugarcane in Puerto Rico*—(a) *For all farms, except the Island of Vieques.* The requirements of section 301 (e) of the Sugar Act of 1937 shall be deemed to have been met with respect to a farm in Puerto Rico, except in the Island of Vieques, if there are carried out during the calendar year 1939 the following farming practices:

(1) *Farms containing more than 400 acres of sugarcane.* For farms on which more than 400 acres of sugarcane are growing at any time during 1939:

(i) The application to land on which sugarcane is planted during 1939 of sufficient chemical fertilizer to provide an average quantity of plant food per acre fertilized equal to not less than the greater of either 150 pounds or 80 percent of the average quantity of plant food contained in the chemical fertilizer applied to similar land in 1937 or 1938, whichever was smaller.

(ii) The application to land on which a ratoon crop of sugarcane is started during 1939 of sufficient chemical fertilizer to provide an average of not less than 100 pounds of plant food per acre fertilized.

(2) *Farms containing more than 100, but not more than 400, acres of sugarcane.* For farms on which more than 100, but not more than 400, acres of sugarcane are growing at any time during 1939:

(i) The application to land on which sugarcane is planted during 1939 of chemical fertilizer in an amount averaging not less than 400 pounds per acre fertilized.

(ii) The application to land on which a ratoon crop of sugarcane is started during 1939 of chemical fertilizer in an amount averaging not less than 265 pounds per acre fertilized.

(3) *Farms containing more than 10, but not more than 100, acres of sugarcane.* For farms on which more than 10, but not more than 100, acres of sugarcane are growing at any time during 1939:

(i) The application to land on which sugarcane is planted during 1939 of chemical fertilizer in an amount averaging not less than 250 pounds per acre fertilized.

(ii) The application to land on which a ratoon crop of sugarcane is started during 1939 of chemical fertilizer in an amount averaging not less than 165 pounds per acre fertilized.

(iii) In lieu of the provisions of subparagraphs (i) and (ii) of this paragraph, the carrying out on the farm of any of the soil building practices contained in the 1939 Agricultural Conservation Program Bulletin, Puerto Rico, for which payment would be made in an amount equal to at least $1.00 per acre of land on which sugarcane is planted or a ratoon crop of sugarcane is started during 1939.

(4) *Farms containing not more than 10 acres of sugarcane.* For farms on which not more than 10 acres of sugarcane are growing at any time during 1939:

(i) The application during the 1939 harvest season to the land from which sugarcane is harvested of the tops and trash cut from such sugarcane; or

(ii) The application of fertilizer in the amounts, and to the types of land, set forth in subparagraphs (i) and (ii) of paragraph (a) (3) of this section; or

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(iii) The carrying out on the farm of any of the soil building practices contained in the 1939 Agricultural Conservation Program Bulletin, Puerto Rico, for which payment would be made in an amount equal to at least $0.50 per acre of land on which sugarcane is planted or a ratoon crop of sugarcane is started during 1939.

(b) *For farms in the Island of Vieques.* The requirements of said section 301 (e) of the Sugar Act of 1937 shall be deemed to have been met with respect to a farm in Puerto Rico in the Island of Vieques if there are carried out during the calendar year 1939 the following farming practices:

(1) *Farms containing more than 400 acres of sugarcane.* For farms on which more than 400 acres of sugarcane are growing at any time during 1939:

(i) The application to land on which sugarcane is planted during 1939 of sufficient chemical fertilizer to provide an average quantity of plant food per acre fertilized equal to not less than the greater of either 75 pounds or 80 percent of the average quantity of plant food contained in the chemical fertilizer applied to similar land in 1937 or 1938, whichever was smaller.

(ii) The application to land on which a ratoon crop of sugarcane is started during 1939 of sufficient chemical fertilizer to provide an average of not less than 50 pounds of plant food per acre fertilized.

(2) *Farms containing more than 100, but not more than 400, acres of sugarcane.* For farms on which more than 100, but not more than 400, acres of sugarcane are growing at any time during 1939:

(i) The application to land on which sugarcane is planted during 1939 of chemical fertilizer in an amount averaging not less than 200 pounds per acre fertilized.

(ii) The application to land on which a ratoon crop of sugarcane is started during 1939 of chemical fertilizer in an amount averaging not less than 135 pounds per acre fertilized.

(3) *Farms containing more than 10, but not more than 100, acres of sugarcane.* For farms on which more than 10, but not more than 100, acres of sugarcane are growing at any time during 1939:

(i) The application to land on which sugarcane is planted during 1939 of chemical fertilizer in an amount averaging not less than 125 pounds per acre fertilized.

(ii) The application to land on which a ratoon crop of sugarcane is started during 1939 of chemical fertilizer in an amount averaging not less than 85 pounds per acre fertilized.

(iii) In lieu of the provisions of subparagraphs (i) and (ii) of this paragraph, the carrying out on the farms of any of the soil building practices contained in the 1939 Agricultural Conservation Program Bulletin, Puerto Rico, for which payment would be made in an amount equal to at least $1.00 per acre of land on which sugarcane is planted or a ratoon crop of sugarcane is started during 1939.

(4) *Farms containing not more than 10 acres of sugarcane.* For farms on which not more than 10 acres of sugarcane are growing at any time during 1939:

(i) The application during the 1939 harvest season to the land from which sugarcane is harvested of the tops and trash cut from such sugarcane; or

(ii) The application of fertilizer in the amounts, and to the types of land, set forth in subparagraphs (i) and (ii) of paragraph (b) (3) of this section; or

(iii) The carrying out on the farm of any of the soil building practices contained in the 1939 Agricultural Conservation Program Bulletin, Puerto Rico, for which payment would be made in an amount equal to at least $.50 per acre of land on which sugarcane is planted or a ratoon crop of sugarcane is started during 1939.

(c) *Minimum acreage requirements for the application of fertilizer.* In every case in which the application of fertilizer is required as aforesaid, the number of acres on which fertilizer is to be applied in 1939 shall not be less than 100 percent of the number of acres on which sugarcane is planted during 1939 and not less than 80 percent of the number of acres on which a ratoon crop of sugarcane is started during 1939.

(d) *Additional credit in connection with 1939 Agricultural Conservation Program.* Where there is reference to payments which would be made under the terms of the 1939 Agricultural Conservation Program, Puerto Rico, in subparagraphs (3) (iii) and (4) (iii) of paragraphs (a) and (b), credit is to be allowed, in calculating the payment per acre, for chemical fertilizer applied, if any, at the rate of $0.50 per hundred pounds gross weight.

(e) *Definitions.* Wherever used in this section, except in paragraph (d), chemical fertilizer and plant food are to be defined as follows: "Chemical fertilizer" means commercial chemical fertilizer of which not less than 15 percent of the gross weight consists of plant food. "Plant food" means the aggregate amount of nitrogen, available phosphoric acid, and water soluble potash. (Sec. 301, 50 Stat. 909; 7 U.S.C., Sup. IV, 1131)

Done at Washington, D. C., this 9th day of May 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary.

[F. R. Doc. 39-1565; Filed, May 9, 1939; 12:27 p. m.]

Notices

DEPARTMENT OF THE INTERIOR.

National Bituminous Coal Commission.

[General Docket No. 15]

IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS: IN RE MINIMUM PRICES AS COORDINATED BY THE DISTRICT BOARDS FOR DISTRICTS NOS. 16 AND 18 AND AS COORDINATED BY THE COMMISSION FOR DISTRICTS NOS. 17, 19, 20, 22 AND 23

SUPPLEMENTAL NOTICE IN THE MATTER OF THE HEARING ON THE PROPOSED SCHEDULE OF COORDINATED MINIMUM PRICES FOR DISTRICT NO. 19

Whereas, Notice having heretofore been issued[1] of a hearing to be held in the Albany Hotel in the City of Denver, Colorado, commencing at 10:00 a. m. on the 19th day of May, 1939, for the purpose of receiving evidence to enable the Commission to establish minimum prices f. o. b. transportation facilities at the mines for the kinds, qualities and sizes of coal produced in District No. 19, as provided by Section 4, II, (b) of the Bituminous Coal Act of 1937, and

Whereas, A schedule of proposed minimum prices coordinated by the Commission for District No. 19, being a part of said Notice, was mailed to all code members within District No. 19, but a portion of said schedule was inadvertently omitted from the publication of said schedule in the FEDERAL REGISTER in its issue of May 4, 1939, a copy of said omitted portion being attached hereto and by this reference made a part hereof:

---

[1] 4 F.R. 1777 DI.

Now, therefore, notice is hereby given That at the hearing before the Commission in its Hearing Room in the Albany Hotel, Denver, Colorado, commencing at 10:00 a. m. on the 19th day of May, 1939, the aforesaid portion of the schedule of proposed minimum prices for District No. 19, being the proposed prices for the coals produced in Sub-district No. 2, Rock Springs; Sub-district No. 3, Hanna-Rawlins; Sub-district No. 4, Evanston; Sub-district No. 5, Gebo-Kirby; Sub-district No. 6, Hudson; Sub-district No. 7, Sheridan; Sub-district No. 8, Gillette; Sub-district No. 9, Great Plains, and prices for truck shipment only, will be offered as the proposal of the Commission for District No. 19, in accordance with the terms of the original Notice of Hearing issued herein.

The Secretary of the Commission is hereby directed to cause a copy of this Notice together with the attached portion of the schedule of proposed minimum prices for District No. 19, being pages 12 to 21 of the original schedule, to be published forthwith in the FEDERAL REGISTER.

By order of the Commission.

Dated this 8th day of May 1939.

[SEAL] F. WITCHER MCCULLOUGH,
Secretary.

Subdistrict #2 Rock Springs Group Mines

[Prices F. O. B. mines for Market Areas listed below. Subject to Price Instructions and Exceptions. See Notes and Exceptions Below. See Base Sizes Table]

RAIL SHIPMENTS ONLY

Size group	Base size	Market area 45 through 50, 52 through 70, 75, 200 through 203	Market area 217 through 219	Market area 204 through 208, 210	Market area 234, 241	Market area 243	Market area 215 [1]	Market area 216	Market area 213, 214, 237 through 240
1	Lump 8"	330	365	355	400	325	365	365	400
2	Lump 6" and 7"	330	365	355	400	325	365	365	400
3	Lump 3" and 5"	300	335	325	375	315	335	350	375
4	Lump 1¼" and over but less than 3"						335	335	
5	Stove 8" x 3"	295	335	325	370	300	335	335	370
6	Stove 7" x 3"	295	335	300	370	300	335	335	370
7	Grate 8" x 1⅝" and 5" x 3"	275	310	300	310		310	275	310
8	Nut 5" x 2"	255	290	280	275		290	240	275
9	Pea #1 1⅝" x 1"	265	275	275	225		275	215	225
10	Pea #2 1⅝" x ½"	215	225	225	225		225	215	225
11	Pea #3 1" x 5⁄16"	200	210	210	210		210	200	210
12	M/R 8" x 0 and RR Loc. Fuel	240	240	240	240		[2] 240	240	240
13	Resultant 7" x 0	210	210	210	210		210	210	210
15	Slack 1⅝" x 0 [3]	185	185	185	185		185	175	200
16	Slack 1" x 0 [3]	185	185	185	170		185	175	200
17	Duff ½" x 0 [3]	90	90	90	145		90	75	145

[1] Prices in Market Area 215 column apply to all market areas not specifically named.

[2] Union Pacific Coal Co. mines, all sizes, 200 cents per ton, when used by railroads.

[3] See Price Instructions and Exceptions Items 3 and 4.

Subdistrict #3 Hanna-Rawlins Group Mines

[Prices F. O. B. mines for Market Areas listed below Subject to Price Instructions and Exceptions. See Notes and Exceptions below. See Base Sizes Table]

RAIL SHIPMENTS ONLY

Size group	Base size	Market area 56 through 59, 63 through 66, 69, 202, 204, 207	Market area 217, 218 and 219	Market area 202, 203, 205, 206, 208 and 210	Market area 213, 214, 234, 237 through 241	Market area 215 [1]	Market area 216
1	Lump 8"	265	300	290		300	
2	Lump 6" and 7"	265	300	290		300	
3	Lump 3" and 5"	265	300	290		300	
4	Lump less than 3"	265	300	290		300	
5	Stove 8" x 3"	250	275	265		275	
6	Stove 7" x 3"	250	275	265		275	
7	Grate 8" x 1⅝" and 5" x 3"	240	275	265		275	
8	Nut 5" x 2"	240	275	265		275	
9	Pea #1 1⅝" x 1"	200	200	200		200	
10	Pea #2 1⅝" x ½"	175	175	175		175	
12	M/R 8" x 0" and RR Loc. Fuel	200	200	200		200	
13	Resultant 7" x 0	200	200	200		200	
15	Slack 1⅝" x 0	150	150	150		150	
16	Slack 1" x 0	150	150	150		150	
17	Duff ½" x 0	75	75	75		75	

[1] Prices in Market Area 215 column apply to all market areas not specifically named.

Subdistrict #4 Evanston Group Mines

[Prices F. O. B. mines for Market Areas listed above. Subject to Price Instructions and Exceptions. See Notes and Exceptions Below. See Base Sizes Table]

RAIL SHIPMENTS ONLY

Size group	Base size	Market area 56 through 59, 63 through 66, 69, 202, 204, 207	Market area 217, 218 and 219	Market area 202, 203, 205, 206, 208 and 210	Market area 213, 214, 234, 237 through 241	Market area 215 [1]	Market area 216
2	Lump 6" and 7"					350	350
3	Lump 3" and 5"				350	350	350
4	Lump less than 3"					275	275
8	Nut 5" x 2"				240	240	240
10	Pea #2 1⅝" x ½"					150	150
12	M/R 8" x 0 and RR Loc. Fuel					200	200
14	Resultant 2½" x 0				125	125	125

[1] Prices in Market Area 215 column apply to all market areas not specifically named.

Subdistrict #5 Gebo-Kirby Group Mines

[Prices F. O. B. mines for Market Areas listed below. Subject to Price Instructions and Exceptions. See Notes and Exceptions Below. See Base Sizes Table]

RAIL SHIPMENTS ONLY

Size group	Base size	Market area 45 and 46	Market area 47 through 50, 52 through 54, 56 through 59, 63 through 70, 75, 204, and 207	Market area 215, 217, 218, 219[1]	Market area 205, 206, 208, 210	Market area 200	Market area 202, 203	Market area 213, 214, 237 through 240	Market area 201
1	Lump 8"	380	390	480	470	415	445	430	420
2	Lump 6" and 7"	380	390	480	470	415	445	430	420
3	Lump 3" and 5"	365	385	475	465	400	440	425	415
4	Lump less than 3"	345	375	465	455	380	430	415	405
5	Stove 8" x 3"	345	375	465	455	380	430	415	405
6	Stove 7" x 3"	345	375	465	455	380	430	415	405
7	Grate 8" x 1⅝" and 5" x 3"	345	375	440	430	360	405	400	390
8	Nut 5" x 2"	290	270	330	320	305	295	305	295
9	Pea #1 1⅝" x 1"		250	250	250	225	225	225	225
10	Pea #2 1⅝" x ½"								
12	M/R 8" x 0 and RR. Loc. Fuel			270	270			270	270
13	Resultant 7" x 0			185	185				
15	Slack 1⅝" x 0[2]	160	150	[3] 150	150	150	150	150	150
16	Slack 1" x 0[2]	125	150	[3] 150	150	150	150	150	150
17	Duff ½" x 0								

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[1] Prices in Market Area 215, 217, 218, 219 column apply to all market areas not specifically named.
[2] See Price Instructions and Exceptions, item 6.
[3] Price to Railroads, Size Group 15, 125 cents per ton and Size Group 16, 100 cents per ton.

Subdistrict #6 Hudson Group Mines

[Prices F. O. B. mines for Market Areas listed below. Subject to Price Instructions and Exceptions. See Note and Exceptions Below. See Base Sizes Table]

RAIL SHIPMENTS ONLY

Size group	Base size	Market area 217, 218, 219	Market area 45 through 50, 52 through 54, 56 through 59, 63 through 70, 72 and 75, 204, 205, 207, 208 and 210	Market area 206	Market area 203	Market area 213, 234, 237 through 241	Market area 200 through 202	Market area 215[4]
1	Lump 8"	175	165	190	190	200	190	170
2	Lump 6" and 7"	175	165	190	190	200	190	170
3	Lump 3" and 5"							
4	Lump less than 3"							
5	Stove 8" x 3"	160	150	165	165	175	165	170
6	Stove 7" x 3"	160	150	165	165	175	165	170
7	Grate 8" x 1⅝" and 5" x 3"	135	125	140	140	140	130	170
8	Nut 5" x 2"							
9	Pea #1 1⅝" x 1"	120	120	125	125	120	120	125
10	Pea #2 1⅝" x ½"	120	120	125	125	120	120	125
12	M/R 8" x 0 and RR Loc. Fuel							170
13	Resultant 7" x 0							145
14	Resultant 2½" x 0	100	100	125	100	100	100	90
15	Slack 1⅝" x 0	90	90	115	90	90	90	90
16	Slack 1" x 0							90

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[1] Prices in Market Area 215 column apply to all market areas not specifically named.

Subdistrict #7 Sheridan Group Mines

[Prices F. O. B. mines for Market Areas listed below. Subject to Price Instructions and Exceptions. See Notes and Exceptions Below. See Base Sizes Table]

RAIL SHIPMENTS ONLY

Size group	Base size	Market area 217, 218, 219	Market area 45 through 50, 52 through 54, 56 through 59, 63 through 70, 72, 75, 204, 205, 207, 208, 210	Market area 206	Market area 203	Market area 234, 237 through 242	Market area 200 through 202	Market area 213	Market area 214	Market area 215[1]
1	Lump 8"	175	165	190	190	200	190	210	180	170
2	Lump 6" and 7"	175	165	190	190	200	190	210	180	170
3	Lump 3" and 5"									
4	Lump less than 3"									
5	Stove 8" x 3"	160	150	165	165	175	165	185	160	170
6	Stove 7" x 3"	160	150	165	165	175	165	185	160	170
7	Grate 8" x 1⅝" and 5" x 3"	135	125	140	140	140	130			170
8	Nut 5" x 2"	135	125	130	130	140	130	150	140	145
9	Pea #1 1⅝" x 1"	120	120	125	125	120	120	140	125	125
10	Pea #2 1⅝" x ½"	120	120	125	125	120	120	140	125	125
12	M/R 8" x 0 and RR Loc. Fuel								170	170
13	Resultant 7" x 0									145
14	Resultant 2½" x 0[2]	100	100	125	100	100	100	100	115	[3] 90
15	Slack 1⅝" x 0[2]	90	90	115	90	90	90	90	100	[3] 90
16	Slack 1" x 0[2]								100	90

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[1] Prices in Market Area 215 column apply to all market areas not specifically named.
[2] See Price Instructions and Exceptions, item 5.
[3] Price to Railroads Size Group 14, 135 cents per ton and Size Group 15, 125 cents per ton.

Subdistrict #8 Gillette Group Mines

[Prices F. O. B. mines for Market Areas listed below. Subject to Price Instructions and Exceptions. See Note and Exceptions Below. See Base Sizes Table]

RAIL SHIPMENTS ONLY

Size group	Base size	Market area 204 through 207	Market area 200 through 203	Market area 215[1]
1	Lump 14" x 9"	165	190	175
2	Lump 6" and 7"	165	190	175
4	Lump less than 3"	140	165	150
8	Nut 5" x 2"	120	120	130
9	Pea #1 1⅝" x 1"	125	125	125
10	Pea #2 1⅝" x ½"			
12	M/R 8" x 0 and RR Loc. Fuel			130
14	Resultant 2½" x 0	90	90	90
15	Slack 1⅝" x 0	90	90	90
16	Slack 1" x 0		90	

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[1] Prices in Market Area 215 column apply to all market areas not specifically named.

Subdistrict #9 Great Plains Group Mines

[Prices F. O. B. mines for market areas listed above. Subject to price instructions and exceptions. See notes and exceptions below. See base sizes table]

RAIL SHIPMENTS ONLY

Size group	Base size	Market area 204 through 207	Market area 200 through 203	Market area 215[1]
2	Lump 6" & 7"	---	---	240
3	Lump 3" & 5"	---	---	240
4	Lump less than 3"	---	---	240
6	Stove 8" x 3"	---	---	240
6	Stove 7" x 3"	---	---	240
7	Grate 8" x 1⅝" & 5" x 3"	---	---	220
8	Nut 5" x 2"	---	---	220
9	Pea #1 1⅝" x 1"	---	---	125
10	Pea #2 1⅝" x ½"	---	---	125
12	M/R 8" x 0 & RR Loc. Fuel	---	---	150
14	Resultant 2½" x 0	---	---	125
15	Slack 1⅝" x 0	---	---	125
16	Slack 1" x 0	---	---	100
17	Duff ½" x 0	---	---	50

[1] Prices in Market Area 215 column apply to all market areas not specifically named.

Prices for Truck Shipment Only

FOR TRUCK MINE SHIPMENT ONLY

[Prices in cents per ton for shipment into all market areas]

Code member index—name	Mine	County	Size groups																
			8"	7"	5"	Under 3"	8" x 3"	7" x 3"	8" x 1⅝", 5" x 3"	5" x 2"	1⅝" x 1"	1⅝" x ½"	1" x 3/16"	Mine run	7" x 0	2½" x 0	1⅝" x 0	1" x 0	½" x 0
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Subdistrict No. 1—Kemmerer																			
Blind Bull Coal Co.	Blind Bull	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Diamond Coal & Coke Co.	Oakley #2	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Hudson & Simpson	Cache Creek	---	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Kampman, Isaac	Kampman	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Kemmerer Coal Co.	Gomer	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Kemmerer Coal Co.	Susie	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Kemmerer Coal Co.	Brilliant	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Kemmerer Coal Co.	Elkol	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Lincoln-Star Coal Co.	Lincoln-Star	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Mischler, J. J.	Mischler	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Noker, John	Granite Creek	Teton	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Shearer, Owen	Buffalo	Teton	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Vail Coal Mining Co.	Vail	Lincoln	400	400	385	370	370	370	310	275	225	225	210	275	---	---	185	185	125
Subdistrict No. 2—Rock Springs																			
Colony Coal Co.	Peacock	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Colony Coal Co.	Megeath	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Colony Coal Co.	Dines	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Gunn-Quealy Coal Co.	Sweetwater	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Gunn-Quealy Coal Co.	Gunn	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Jarvie, John	Jarvie	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Kleinstick, Herbert	Cotton Wood	---	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Lion Coal Corp.	Star	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Rock Spring Fuel Co.	Kleen Fyre	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Rock Spring Fuel Co.	Premier	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	---	185	185	90
Songster, Louis	Songster	Sweetwater	365	365	335	335	335	335	310	290	275	225	210	240	210	200	185	185	90
Subdistrict No. 3—Hanna-Rawlins																			
Beeler, C. E.	Beeler	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Carbon County Coal Co.	Carbon	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Elk Mt. Valley Coal Co.	Elk Mt.	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Johnson, J. L.	Johnson	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Nelson & Edlund	Dana	---	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Northrop, H. B.	Gary	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Nugget Coal Co.	Nugget	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Pioneer Coal Co.	Pioneer	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Rawlins Coal Co.	Rawlins	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Siltamaki, G. E.	Elmo Peacock	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Union Pacific Coal Co.	Hanna	Carbon	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Wignal, H. R.	Midwest	---	300	300	300	300	275	275	275	275	200	175	---	200	200	---	150	150	75
Subdistrict No. 4—Evanston																			
Bear River Coal Co. (Martin, J. H.).	Almy #4	Uinta	---	350	350	275	---	---	---	240	---	150	---	200	---	125	---	---	---
Matson, Oscar	Altamont	Uinta	---	350	350	275	---	---	---	240	---	150	---	200	---	125	---	---	---
Nice, Jess	Junction	Uinta	---	350	350	275	---	---	---	240	---	150	---	200	---	125	---	---	---
Zurowski and Urbania.	Kendall	Uinta	---	350	350	275	---	---	---	240	---	150	---	200	---	125	---	---	---
Subdistrict No. 5—Gebo-Kirby																			
Ace of Spades Coal Co.	Ace of Spades	Park	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Burnell, Pat	Gebo 2 & 4	Park	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Burns, Patric	Blk. Diamond	Park	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Carey, John	Carey	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Duncan, Robert	Mantua-Big Seven.	Park	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Eagle Mine Co.	Eagle	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Ferelli, Joe	Ferelli	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Halbert & Malicky (Valley Coal Mine).	Valley	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Hutchison Coal Co. (David, G. H.).	Hutchison	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100

Prices for Truck Shipment Only—Continued

FOR TRUCK MINE SHIPMENT ONLY

[Prices in cents per ton for shipment into all market areas]

Prices for Truck Shipment Only—Continued

FOR TRUCK MINE SHIPMENT ONLY

[Prices in cents per ton for shipment into all market areas]

Code member index—name	Mine	County	Size groups																
			8"	7"	5"	Under 3"	8" x 3"	7" x 3"	8" x 1⅝", 5" x 3"	5" x 2"	1⅝" x 1"	1⅝" x ½"	1" x 3⁄16"	Mine run	7" x 0	2½" x 0	1⅝" x 0	1" x 0	½" x 0
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
King & Haff (Gebo Coal Mine).	Gebo #1	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Manderson Coal Co	Manderson	Big Horn	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Miller, A. C	Miller	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Ronceo Coal Co	Ronceo	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Spring Gulch Coal Co. (Hafferty, C. E.).	Spring Gulch	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Vlastos, Emanuel	Osborn	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Wright, R. E	Wright	Hot Springs	500	500	495	485	485	485	460	350	270	245	---	290	---	---	170	170	100
Subdistrict No. 6—Hudson																			
Barguin, James	Barguin	Fremont	325	325	325	300	275	275	275	250	150	150	---	195	---	125	115	---	---
Bell Coal Co. (Bell, George W.).	Hudson #2	Fremont	325	325	325	300	275	275	275	250	150	150	---	195	---	125	115	---	---
Boyle, Ray S	Boyle	Fremont	325	325	325	300	275	275	275	250	150	150	---	195	---	125	115	---	---
Gaber, John and Petro, Paul.	Indian	Fremont	325	325	325	300	275	275	275	250	150	150	---	195	---	125	115	---	---
Schroeder, J. J	Schroeder	Fremont	325	325	325	300	275	275	275	250	150	150	---	195	---	125	115	---	---
Williams, J. R	Williams	Fremont	325	325	325	300	275	275	275	250	150	150	---	195	---	125	115	---	---
Wise, Otto F	Mitchel #2	Fremont	325	325	325	300	275	275	275	250	150	150	---	195	---	125	115	---	---
Subdistrict No. 7—Sheridan																			
Custer Coal Co. (Armstrong, James).	Custer	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Hoskins, T. A	Blk. Dia	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Hotchkiss Coal Co	Hotchkiss	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Krezlock, Mike	Krezlock	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Legerski, John	New Deal	Sheridan	280	280	270	260	260	260	220	220	160	136	---	170	---	90	90	---	---
Malli, John	Wildehorse	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Sayles, William H	Tongue-River	Sheridan	280	280	270	260	260	250	220	220	160	135	---	170	---	90	90	---	---
Sharp, L. C	Riverside	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Sheridan Wyo. Coal Co.	Monarch	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Sheridan Wyo. Coal Co.	Acme	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Star Coal Co. (Kuzara, George).	Star	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Storm King Coal Co. (Patvaros, Wm.)	Storm King	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Whitham, G. A	Whitham	Sheridan	280	280	270	260	260	260	220	220	160	135	---	170	---	90	90	---	---
Subdistrict No. 8—Gillette																			
Marinoni, Andrew	Aladin		200	200	---	200	---	---	---	---	130	130	130	---	130	---	100	90	---	---
Ward, J. A	Black Dia	Campbell	200	200	---	200	---	---	---	---	130	130	130	---	130	---	100	90	---	---
Wyodak Coal & Mfg. Co.	Wyodak	Campbell	200	200	---	200	---	---	---	---	130	130	130	---	130	---	100	90	---	---
Subdistrict No. 9—Great Plains																			
Best Coal Co. (J. J. Morsh).	Morsh	Converse	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Buffalo Coal Co. (Pichlmaier, R.)	Buffalo	Johnson	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Bunning, H. J	Bunning	Johnson	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Burd, Ross H	Superior	Natrona	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Clark, Wm	Rosin		---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Davis, Richard	Davis	Johnson	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Domsalla, Fred	Badger	Converse	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Frosheiser, Alex, Jr	Blk. Dia		---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Goff Bros	Goff	Converse	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Howell, C. F (Ware & Howell).	Cole Creek	Converse	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Johnson, Tex	Mt. Home		---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Macon & Bernard	Vulcan		---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Matheson, Jim	Matheson		---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
McCullough, J. R	Lost Canyon	Niobrara	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Merrill, Harry	Merrill	Johnson	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Millner, W. F	Millner	Converse	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Nussbacher, Alois	Piney	Johnson	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Niemcyk, Felix	E. Antelope	Converse	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Peiffer, Peter	Peiffer	Natrona	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Shockey, B. L	Sandcreek	Converse	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Stevens & Guthro	Gray		---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Swigart, Ross A	Swigart	Natrona	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
Washut, George	Clear Creek	Johnson	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50
York, Henry	York	Converse	---	240	240	240	240	240	220	220	125	125	---	150	---	125	125	100	50

[F. R. Doc. 39-1560; Filed, May 8, 1939; 12:55 p. m.]

DEPARTMENT OF AGRICULTURE.

Food and Drug Administration.

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH A REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: EGGS, LIQUID WHOLE EGGS, LIQUID MIXED EGGS, FROZEN WHOLE EGGS, DRIED WHOLE EGGS, EGG YOLK, FROZEN EGG YOLK, DRIED EGG YOLK

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSION AND ORDER, RELATIVE TO EGGS, LIQUID WHOLE EGGS, LIQUID MIXED EGGS

General Statement

1. In pursuance of the authority of subsection (e), Section 701, of the Federal Food, Drug and Cosmetic Act (Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)), the Secretary of Agriculture on his own initiative published on December 15, 1938, which appeared on Page 3011, of the FEDERAL REGISTER, a notice of a public hearing to be held on January 23, 1939, in Room 3036, Department of Agriculture, South Building, Independence Ave., between 12th and 14th Sts., S. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: Eggs, Liquid Whole Eggs, Liquid Mixed Eggs, Frozen Whole Eggs, Dried Whole Eggs, Egg Yolk, Frozen Egg Yolk, Dried Egg Yolk. This notice contained a proposal in general terms for a reasonable definition and standard of identity that would promote honesty and fair dealing in the interest of consumers for each of such foods. The notice designated John McDill Fox and Mr. Daniel P. Willis as Presiding Officers to conduct in the place of the Secretary the foregoing hearing. Thereafter, a public hearing was held at the time and place therein designated, and John McDill Fox served as Presiding Officer (R. pp. 5, 6; Government's Exhibit No. 1.)

2. At said hearing the Presiding Officer announced that he would, on motion of Government's counsel, close the hearing on eggs without the introduction of evidence for the reason alleged that the Department deemed it more expedient and more desirable to include within the various definitions and standards for liquid frozen and dried manufactured egg products which may hereafter be promulgated, an interpretation of the term "eggs" as that word is employed in its relationship to the manufactured product rather than to promote the establishment of an individual standard for eggs as a separate food. There being no objection, the motion was granted.

3. Upon motion of Government's counsel, the hearings scheduled on liquid whole eggs and liquid mixed eggs

were consolidated, there being no objection by any interested person.

4. A consolidated hearing was, therefore, held on liquid whole eggs and liquid mixed eggs on January 23, 1939, at 10:30 a. m., and the hearing with reference to the other egg products was continued to dates subsequently announced, and the hearing on liquid whole eggs and liquid mixed eggs was concluded at 12:20 p. m. on the same day. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. The Presiding Officer, therefore, makes this report and suggests that the Secretary make on the basis of substantial evidence contained in the record, the findings of fact herein contained, the conclusions herein suggested, and if so found, to order the promulgation of the regulation suggested herein.

6. The proposal, as it appeared in the FEDERAL REGISTER on December 15, 1938, concerned itself, *inter alia*, with a proposed reasonable definition and standard of identity for the food products commonly known as liquid whole eggs and liquid mixed eggs. It read as follows:

> Liquid whole eggs consist of the whites and unbroken yolks of eggs, sound and in their natural proportions, broken out of the shell after candling or otherwise sorting out unsound and unfit eggs, and with rejection, after breaking, of any remaining unsound and unfit eggs; packed in a suitable container.
>
> Liquid mixed eggs consist of a homogeneous, strained mixture of the whites and yolks of eggs, sound and in their natural proportions; broken out of the shell after candling or otherwise sorting out unsound and unfit eggs, and with rejection, after breaking, of any remaining unsound and unfit eggs; packed in a suitable container.

7. Within the time so provided, various interested persons filed proposed findings of fact. The proposed findings of fact concerned: (1) The name of the product, (2) The breaking process, (3) The use of the term "sound."

8. There was no substantial controversy in the evidence.

9. Testimony was given which described in detail what the products were and the method of breaking employed by both a Government witness and industry witnesses. Because of the substantial agreement of the evidence, it is not deemed necessary to summarize the evidence except as indicated by references to the transcript and the suggested findings.

10. Therefore, the Presiding Officer suggests that an order be made and entered by the Secretary of Agriculture setting forth the detailed findings of fact hereinafter suggested as part of such order, and promulgating the regulation hereinafter set forth.

Suggested Findings

1. Eggs used in the preparation of liquid whole eggs and liquid mixed eggs are the eggs of the fowl known as *gallus domesticus*, or the barnyard hen. (R., pp. 10, 21, 22)

2. The eggs which have been found to be sound and fit for breaking are broken over an apparatus consisting of a horizontal bar of metal set on edge. Underneath the horizontal bar is a tray with a false bottom, in which is kept a cup into which the broken eggs are placed after the breaking has been accomplished. (R., pp. 13, 14)

3. The eggs as broken out may be stirred or churned and strained, but, ordinarily, they are sold just as they fall into the can after breaking out. (R., pp. 23, 24, 25, 26, 27)

4. In the breaking process, some of the yolks and whites will be broken and intermingled, and the intermingling of yolks and whites may also occur when they are emptied into the thirty-pound containers. It is, therefore, commercially impracticable to have liquid whole eggs in the sense that all the yolks and whites are unbroken. (R., p. 23)

5. "Liquid eggs," "fresh broken whole eggs," "fresh broken eggs," "fresh broken mixed eggs," "fresh broken mixed," and "liquid whole eggs" are synonymous terms for the egg product herein described. (R., pp. 17, 18)

6. Liquid whole eggs and liquid mixed eggs are the same product. There is no distinction in commercial practice between the product called liquid whole eggs and the product referred to in Government's Exhibit No. 1 as liquid mixed eggs, except as to the practice of mixing or straining or not so mixing and straining; and, therefore, one standard should include variations of the same product. (R., pp. 17, 18)

7. The word "fresh," as a descriptive term for the food described herein, is inaccurate and misleading. This is true because the term "fresh" is most frequently associated with eggs that are recently laid, whereas the food in question is generally prepared from cold storage eggs. Furthermore, the use of the term might erroneously indicate that the breaking process had been recently done. For these reasons, the term "fresh" should not be used as a descriptive part of a standard for the food described herein. (R., pp. 19, 29)

8. The food described herein should be designated as "liquid whole eggs," "broken whole eggs," "mixed whole eggs," "liquid eggs," "broken eggs," or "mixed eggs."

9. A definition and standard of identity based upon the factors outlined in the proposed findings of fact would be reasonable and is a necessity, in order to promote honesty and fair dealings in the interest of the consumer. (R., p. 28) Such a standard would tend to prevent the addition of water, sugar, or salt to the product. It would also tend to prevent the addition of excess whites, thereby cheapening the product. A standard would also promote the certainty of understanding among consumers as to the exact nature and identity of the food in question. (R., pp. 20, 21)

10. The food under consideration has been subjected to the sharp practices of adding to the eggs canned pumpkin, excess whites, added water, sugar, and salt. (R., p. 22)

Suggested Conclusions in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable definition and standard of identity for the food products commonly known as liquid whole eggs and liquid mixed eggs, is hereby suggested to be promulgated as a regulation in order to promote honesty and fair dealing in the interest of consumers:

Liquid eggs, mixed eggs, liquid whole eggs, mixed whole eggs, are eggs of the domestic hen, broken from the shells, and with yolks and whites in their natural proportions as so broken. They may be mixed, or mixed and strained.

Time Within Which to File Objections

Within ten days after the receipt by registered mail of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion and order, shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the Presiding Officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN McDILL FOX,
Presiding Officer.

APRIL 24, 1939.

[F. R. Doc. 39-1538; Filed, May 5, 1939; 1:07 p. m.]

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH A REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: EGGS, LIQUID WHOLE EGGS, LIQUID MIXED EGGS, FROZEN WHOLE EGGS, DRIED WHOLE EGGS, EGG YOLK, FROZEN EGG YOLK, DRIED EGG YOLK

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSION AND ORDER RELATIVE TO FROZEN WHOLE EGGS

General Statement

1. In pursuance of the authority of subsection (e), Section 701, of the Federal

Food, Drug and Cosmetic Act (Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e), the Secretary of Agriculture on his own initiative published on December 15, 1938, which appeared on Page 3011, of the FEDERAL REGISTER, a notice of a public hearing to be held on January 23, 1939, in Room 3036, Department of Agriculture, South Building, Independence Avenue., between 12th and 14th Sts., S. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: Eggs, Liquid Whole Eggs, Liquid Mixed Eggs, Frozen Whole Eggs, Dried Whole Eggs, Egg Yolk, Frozen Egg Yolk, Dried Egg Yolk. This notice contained a proposal in general terms for a reasonable definition and standard of identity that would promote honesty and fair dealing in the interest of consumers for each of such foods. The notice designated John McDill Fox and Mr. Daniel P. Willis as Presiding Officers to conduct in the place of the Secretary the foregoing hearing. Thereafter, a public hearing was held at the time and place therein designated, and John McDill Fox served as Presiding Officer. (R. pp. 5, 6; Government's Exhibit No. 1)

2. At said hearing the Presiding Officer announced that he would, on motion of Government's counsel, close the hearing on eggs without the introduction of evidence and hold first a hearing on liquid whole eggs and liquid mixed eggs which had been, by motion made by counsel for Government and granted by the Presiding Officer, consolidated for hearing.

3. In pursuance of such announcement he did so hold a consolidated hearing on liquid whole eggs and liquid mixed eggs and continued the hearing with reference to the other foods to dates subsequently to be announced.

4. On January 23, 1939, at 2:05 p. m., the consolidated hearing on liquid whole eggs and liquid mixed eggs was closed and the hearing on frozen whole eggs was convened, which latter hearing was concluded at 4:40 o'clock p. m., January 24, 1939. All interested parties were notified, pursuant to rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. The Presiding Officer, therefore, makes this report and suggests that the Secretary make on the basis of the substantial evidence contained in the record, the findings of fact herein contained, the conclusions herein suggested, and if so found, to order the promulgation of the regulation suggested herein.

6. The proposal, as it appeared in the FEDERAL REGISTER on December 15, 1938, concerned itself, *inter alia*, with a proposed reasonable definition and standard of identity for the food product commonly known as frozen whole eggs. It read as follows:

Frozen whole eggs consist of a homogeneous, strained mixture of the whites and yolks of eggs, sound and in their natural proportions; broken out of the shell after candling or otherwise sorting out unsound and unfit eggs, and with rejection, after breaking, of any remaining unsound and unfit eggs; packed in a suitable container; and frozen in such a manner as to prevent spoilage.

7. Within the time so provided, various interested persons filed proposed findings of fact which, if granted, would modify the general proposal printed in the FEDERAL REGISTER. These proposed findings of fact concerned: (1) The name of the product, (2) Substitution of the words "edible" and "inedible" for "sound" and "unsound," (3) Clarification of the phrase "natural proportions" of the white and yolk as broken out of the shell, and (4) Other clarifying words to make the meaning of the definition more definite.

8. There was controversy in the evidence in regard to the designation of the product, that is, with reference to whether the name, Liquid Mixed Eggs, should be reserved for that product where the whites and yolks of hen's eggs not in their natural proportions as broken out of the shell, including the technical term "drip," are so mixed, manipulated and frozen as to produce a product similar in composition to a mixture of yolks and whites of hen's eggs as broken out of the shell in their natural proportions and frozen; and further controversy developed with reference to the word "sound" being associated with shell eggs and not to the contents of shell eggs. There was testimony that the identity of frozen whole eggs be determined by measuring the percentage of egg solids in the final product.

9. Testimony was given which described in detail what are frozen whole eggs; the background of the Department in announcing prior advisory standards; and, under the present act, the history of the industry and the basis of presenting the proposal for the standard under such act.

Mr. Calloway, a Government Witness, who is a Senior Chemist in the Food and Drug Administration, United States Department of Agriculture, and Secretary of the Food Standards Committee of the Food and Drug Administration, testified substantially as follows:

After he had qualified himself as an expert with reference to his early training at Alabama Polytechnic Institute, Pasteur Institute, Paris, France, and Columbia University, New York, he detailed his long experience with the Department. It appears that he entered the Bureau of Chemistry, now the Food and Drug Administration, of the Department of Agriculture in 1914, as a food chemist; and, except for a brief interruption for war service, has been continuously so employed. During such time he has had many occasions to become thoroughly familiar with frozen whole eggs, including the type of shell eggs from which they are prepared, the methods of removing from the shell and the manner of freezing them in various plants operating in the eastern one-third of the United States. He likewise has had occasion to examine and supervise laboratory examinations of a great many samples of frozen whole eggs moving in interstate commerce.

As Secretary of the Food Standards Committee, this witness recently conducted a survey of the frozen whole egg industry to secure information as to present trade practices and consumer understanding with respect to the product. Representatives of the Food and Drug Administration were directed to call upon producers and consumers of frozen whole eggs in all parts of the United States to secure such information and officially report the results of such investigation and survey. The original official reports of such survey were present in the hearing room, marked for identification, and made available for examination. The summary of the reports showed that field representatives of the Food and Drug Administration visited 64 consumers and 68 producers of frozen whole eggs in various parts of the United States. The producers and consumers visited on this survey included some of the largest, some of the smaller, as well as those intermediate, and represented an accurate cross-section of all phases of the industry in the United States. The producers of frozen whole eggs visited represented roughly one-third of the entire industry. The procedure that was described for the production of frozen whole eggs by this witness was not controverted. The majority of consumers, he testified, did not specify when buying frozen whole eggs and egg solids content, although some of the consumers stated they bought frozen whole eggs on specification ranging from 25½% to 28% egg solids. (R. pp. 25, 26)

Cross examination raised some question as to the meaning of the word "consumer" when applied to the frozen whole egg industry. The witness stated that his use of the word "consumer" included those who used frozen whole eggs in the preparation of other edible products, such as, bakers, mayonnaise and salad dressing manufacturers, as well as those who eat and consume such articles.

The witness testified that only hen's eggs, or the product of the domestic hen, are used in preparing frozen whole eggs.

The witness further testified that the need for standardizing this product arose by reason of the fact that when eggs are separated out of the shell there is more demand for the yolks than the whites and consequently the tendency in some portions of the industry has been to add excess whites to yolks, thereby selling such excess white at the yolk price.

Cross examination raised some question as to the practicability or reasonableness of defining frozen whole eggs by including a determination of the percentage of egg solids. There was substantial evidence to show that such a determination would not be practicable and would not accurately reflect the condition of the product for the reason that shell eggs in storage lose moisture and if such eggs are broken out and frozen as frozen whole eggs, they will have a high percentage of egg solids while shell eggs which have been broken out soon after having been laid, will have most of its natural moisture and show lower solid content.

There was substantial evidence to support the finding that the word "sound," when applied to the content of shell eggs, was more definite in meaning than the word "edible," and that the word "edible" is one which is used differently by different people. Foods that some persons might consider edible, others would not use at all due to religion, distaste, or prejudice.

Witnesses Lepper, Heaton, Hader, Asay, Parsons, Roller, Morris, Israel, Dalve, King and Stockard corroborated in whole or in part witness Callaway.

Therefore, the Presiding Officer suggests that an order be made and entered by the Secretary of Agriculture setting forth the detailed findings of fact hereinafter suggested as part of such order, and promulgating the regulation hereinafter set forth.

Suggested Findings

1. *Kind of eggs.* Only hen's eggs or the product of the domestic hen *gallus domesticus* are used in the preparation of frozen whole eggs.

2. *Candling.* That such eggs are candled to remove unsuitable and unsound eggs.

3. *Breaking.* That such eggs are broken out of the shell and the liquid portion of the egg removed.

4. *Organaleptic examination.* That such liquid portion, which consists of the yolk and white in its natural proportion as broken out of the shell, is smelled and any sour, musty, or unfit eggs removed.

5. *Sound.* That the word "sound" is more definite and appropriate when applied to the liquid or frozen content of hen's eggs than any other adjective suggested.

6. *Mixing and straining.* That such liquid portions are thoroughly mixed, strained, and placed in containers. Before freezing they are liquid eggs.

7. *Freezing.* That such containers are placed in a freezer and completely frozen.

8. *Synonyms.* That frozen whole eggs, frozen mixed eggs, and frozen eggs, are all designations and synonyms for the same product.

9. That frozen whole eggs, frozen mixed eggs, and frozen eggs, are merely frozen liquid eggs and there is no necessity for a definition distinguishing such food product except as to the condition "frozen" from liquid eggs.

Suggested Conclusions in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable definition and standard of identity for the food product commonly known as frozen whole eggs, is hereby suggested to be promulgated as a regulation in order to permit honesty and fair dealing in the interest of consumers:

Frozen Eggs, Frozen Whole Eggs, Frozen Mixed Eggs; Identity. Frozen Eggs, Frozen Whole Eggs, Frozen Mixed Eggs are frozen liquid eggs.

Time Within Which To File Objections

Within ten days after the receipt by registered mail of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion and order, shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the Presiding Officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN McDILL FOX,
Presiding Officer.

APRIL 25, 1939.

[F. R. Doc. 39-1535; Filed, May 5, 1939; 1:05 p. m.]

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH A REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: EGGS, LIQUID WHOLE EGGS, LIQUID MIXED EGGS, FROZEN WHOLE EGGS, DRIED WHOLE EGGS, EGG YOLK, FROZEN EGG YOLK, DRIED EGG YOLK

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSION AND ORDER RELATIVE TO DRIED WHOLE EGGS

General Statement

1. In pursuance of the authority of subsection (e), Section 701, of the Federal Food, Drug and Cosmetic Act (Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e), the Secretary of Agriculture on his own initiative published on December 15, 1938, which appeared on Page 3011, of the FEDERAL REGISTER, a notice of a public hearing to be held on January 23, 1939, in Room 3036, Department of Agriculture, South Building, Independence Ave., between 12th and 14th Sts., S. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: Eggs, Liquid Whole Eggs, Liquid Mixed Eggs, Frozen Whole Eggs, Dried Whole Eggs, Egg Yolk, Frozen Egg Yolk, Dried Egg Yolk. This notice contained a proposal in general terms for a reasonable definition and standard of identity that would promote honesty and fair dealing in the interest of consumers for each of such foods. The notice designated John McDill Fox and Mr. Daniel P. Willis as Presiding Officers to conduct in the place of the Secretary the foregoing hearing. Thereafter, a public hearing was held at the time and place therein designated, and John McDill Fox served as Presiding Officer. (R. p. 5; Government's Exhibit No. 1)

2. At said hearing the Presiding Officer announced that he would hold hearings on various egg products at times to be announced during the course of the various hearings.

3. Pursuant to this announcement, the hearing for the purpose of receiving evidence on the basis of which a regulation may be promulgated fixing and establishing a definition and standard of identity for the food product commonly known as dried whole eggs came up for hearing at 3:15 p. m., January 25, 1939, and was finally concluded at 10:35 a. m. on January 26, 1939. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

4. The Presiding Officer, therefore, makes this report and suggests that the Secretary make on the basis of substantial evidence contained in the record, the findings of fact herein contained, the conclusions herein suggested, and if so found, to order the promulgation of the regulation suggested herein.

5. The proposal, as it appeared in the FEDERAL REGISTER on December 15, 1938, concerned itself, *inter alia*, with a proposed reasonable definition and standard of identity for the food product commonly known as dried whole eggs. It read as follows:

> Dried whole egg consists of a homogeneous, strained mixture of the whites and yolks of eggs, sound and in their natural proportions; broken out of the shell after candling or otherwise sorting out unsound and unfit eggs, with rejection, after breaking, of any remaining unsound and unfit eggs; dried to a maximum moisture content of ____ percent (to be fixed at a point between seven percent and eight and five-tenths percent) ground or unground; and packed in a suitable container.

6. Within the time so provided, various interested persons filed proposed findings of fact. The proposed findings of fact concerned: (1) The method of determining total solids and the amount of total solids requisite, (2) The method of drying eggs.

7. There was controversy on the question of whether or not a definite percentage of solid content should be set.

8. Testimony was given which described in detail what the food product commonly known as dried whole eggs is, how it is prepared. Testimony with reference to a survey of the industry was presented. Mr. Callaway, a Government witness, who is a senior chemist in the Food and Drug Administration, United States Department of Agriculture, and Secretary of the Food Standards Committee of the Food and Drug Administration, testified as follows: After he had qualified himself as an expert, with reference to his early training at Alabama Polytechnic Institute, Pasteur Institute, Paris, France, and Columbia University, he detailed his experience with the Department of Agriculture. He entered the Bureau of Chemistry of the Department of Agriculture in 1914, and except for a brief interruption for war service, has been continuously with the Department. During such time he has had many occasions to familiarize himself with the food product commonly known as dried whole eggs, and that he has had occasion to examine samples, review reports, read scientific articles, statistics, consult the files of the Food and Drug Administration, review factory inspection reports, and reports of analyses dealing with the product known as dried whole eggs.

From the testimony of this witness, it would seem that hen's eggs were first commercially dried in the United States about 1878, but the business was unimportant until about 1900, when it increased greatly for a while until gradually competition from dried whole eggs produced in China practically killed American industry, that the Chinese product dominated the market in the United States for a number of years. Certain statistics were presented by the witness which showed that the imports during 1928, 1929, and 1930, amounted to over a million pounds. They dropped off for a certain period of time until in 1935, 1936, and 1937, the importations have been over five hundred thousand pounds per year.

The witness detailed two processes: one, the so-called spray-drying method; the other, the so-called pan-drying method.

From the evidence, it would appear that hen's eggs are candled to remove unfit eggs, that the eggs which satisfactorily pass the candling operation are broken and the liquid portion of the egg removed, that such liquid portion, consisting of the yolk and white in their natural proportions as broken out of the shell, is smelled, and any unfit eggs are removed. Such eggs in a liquid condition are thoroughly mixed and strained. The strained mixture is dried either by what is termed the spray-drying process or the pan or tray-drying process. In the spray-drying process, the mixed liquid whole egg is forced through various small openings under high pressure so that it comes out in the form of a fine spray. This spray enters at the top of a large chamber and warm, dry air comes in at the bottom. The "spray-dried" material dries as it falls toward the bottom and accumulates in the bottom of the chamber as an impalpable, yellow powder that is collected and screened to remove lumps, and packed in suitable containers to prevent the accumulation of moisture. Dried whole eggs prepared by this process have a moisture content of five percent, or less.

In the pan or tray-drying process, the mixed liquid whole egg is placed in pans or trays, the bottom of which is heated below the coagulation point of the liquid egg, and a current of dry, warm air is blown across the top until the egg material is dried. This dried egg material is scraped from the pans or trays and ground to a pulp or powder, is packed in suitable containers to prevent the accumulation of moisture, and is usually kept under refrigeration. Dried whole eggs prepared by this process have a moisture content of between seven and eight percent. (R. pp. 10, 16, 17, 18, 29)

A great deal of work has been done by the Food and Drug Administration. A definition promulgated by the Secretary of Agriculture in 1936, read as follows:

> Dried eggs, the product obtained by evaporating the water from liquid eggs, contains not more than seven percent of moisture.

A survey was conducted in the latter part of 1938, to determine the present processes of manufacture, consumer understanding, and the determination of the moisture content of dried eggs on the market. Reports of such investigation were made, and the reports were physically present in the hearing room and available for examination by interested parties. The reports detailed the processes summarized above.

The samples which were collected were examined for moisture by the method given in the book entitled "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists."

It would seem from the evidence that the moisture content of the product prepared by the pan or tray-drying process sometimes goes as high as seven or eight percent, but consumers who were questioned about moisture content stated that they expected the product to be as dry as it was commercially feasible to make it but that none of them actually specified moisture content.

Witness Lepper testified substantially in corroboration of Mr. Callaway. Mr. Lepper is a senior chemist in the Food and Drug Administration, United States Department of Agriculture, in charge of the Dairy and Cereal Section of the Food Division. He obtained a Degree of Bachelor of Science in Chemistry from George Washington University in 1913, joined the Department of Agriculture with the then Bureau of Chemistry in December, 1913, and has continued with the Department to the present time. His duties have been to develop methods of analysis, and the collection of data on the composition of authentic samples of food. The work has entailed the study of manufacturing processes through visits to commercial plants, conducting and directing investigations in such plants, and preparation of experimental batches on a commercial scale. He has published a number of articles on egg and egg products. He is likewise Assistant Editor of the Food Section of the publication known as "Chemical Abstracts," which is a journal of the Association of Official Agricultural Chemists.

In his opinion, the maximum moisture content in the food product, dried eggs or dried whole eggs, using the two terms interchangeably, should be seven percent. He preferred, however (as does Mr. Callaway), to state the limit in reciprocal terms for total solids.

Mr. Parsons, a witness on behalf of the industry, testified with reference to certain research work which he had been doing on the drying of eggs, gave as his opinion that it would be inadvisable to set a moisture standard on the product at this time.

Mr. Kennedy, a witness on behalf of the industry, also testifying with reference to the moisture content, stated that, in his opinion, fixing moisture content at seven percent would be too low for the product which he termed flaked whole eggs, which would seem to be the result of the pan or tray-drying process.

Mr. H. J. Reynolds, a witness on behalf of the industry, testified that he had been conducting various research work on the product. He also preferred, in the definition of the product, to leave out any specification of moisture content and limit it to a statement of total solids. He further stated that if at this time a definite moisture standard for dried whole eggs should be set "it would practically throw overboard the amount of research work we have already done."

9. Therefore, the Presiding Officer suggests that an order be made and entered by the Secretary of Agriculture setting forth the detailed findings of fact hereinafter suggested as part of such order, and promulgating the regulation hereinafter set forth.

Suggested Findings

1. That Dried Eggs is a synonym for Dried Whole Eggs (R. pp. 27, 38).

2. That a definition and standard of identity for Dried Eggs or Dried Whole Eggs based upon a total solids determination would be reasonable and would promote honesty and fair dealing in the interest of consumers, in that, it would definitely set a limit on the amount of moisture, so that an excessively wet dried-egg product could not be sold as Dried Eggs or Dried Whole Eggs (R. pp. 26, 41).

3. That it would be reasonable and it would promote honesty and fair dealing

in the interest of consumers in defining and standardizing Dried Whole Eggs or Dried Eggs to specify the method of determining total solids as being that of the Association of Official Agricultural Chemists which is found in the book entitled "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, on pages 297 and 298, Sections 2 and 3, for the reason that such method is dependable and reliable for such determination (R. pp. 18, 26, 38, 40).

4. That a definition and standard of identity for Dried Eggs or Dried Whole Eggs requiring a total solids of ninety-two percent or more would be reasonable and would promote honesty and fair dealing in the interest of consumers, in that, it would limit the moisture content to not more than eight percent, it would prevent the addition of excess whites, it would prevent the sale, as Dried Eggs or Dried Whole Eggs, of an excessively wet product, and it would be in accord with good commercial practice and consumer understanding of the product. (R. pp. 23, 26, 39–41)

Suggested Conclusions in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable definition and standard of identity for the food products commonly known as dried eggs and dried whole eggs, is hereby suggested to be promulgated as a regulation in order to promote honesty and fair dealing in the interest of consumers:

Dried eggs, dried whole eggs, are dried liquid eggs. They may be powdered. They contain not less than ninety-two percent total egg solids, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, pages 297 and 298, under "Total Solids."

Time Within Which to File Objections

Within ten days after the receipt by registered mail of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion and order, shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the Presiding Officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted,

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

APRIL 26, 1939.

[F. R. Doc. 39–1534; Filed, May 5, 1939; 1:05 p. m.]

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH A REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: EGGS, LIQUID WHOLE EGGS, LIQUID MIXED EGGS, FROZEN WHOLE EGGS, DRIED WHOLE EGGS, EGG YOLK, FROZEN EGG YOLK, DRIED EGG YOLK

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSION AND ORDER RELATIVE TO EGG YOLK

General Statement

1. In pursuance of the authority of subsection (e), Section 701, of the Federal Food, Drug and Cosmetic Act (Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e), the Secretary of Agriculture on his own initiative published on December 15, 1938, which appeared on Page 3011, of the FEDERAL REGISTER, a notice of a public hearing to be held on January 23, 1939, in Room 3036, Department of Agriculture, South Building, Independence Ave., between 12th and 14th Sts., SW., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: Eggs, Liquid Whole Eggs, Liquid Mixed Eggs, Frozen Whole Eggs, Dried Whole Eggs, Egg Yolk, Frozen Egg Yolk, Dried Egg Yolk. This notice contained a proposal in general terms for a reasonable definition and standard of identity that would promote honesty and fair dealing in the interest of consumers for each of such foods. The notice designated John McDill Fox and Mr. Daniel P. Willis as Presiding Officers to conduct in the place of the Secretary the foregoing hearing. Thereafter, a public hearing was held at the time and place therein designated, and John McDill Fox served as Presiding Officer. (R. p. 5; Government's Exhibit No. 1)

2. At said hearing the Presiding Officer announced that he would hold hearings on various egg products at times to be announced during the course of the various hearings.

3. Pursuant to this announcement, the hearing for the purpose of receiving evidence on the basis of which a regulation may be promulgated fixing and establishing a definition and standard of identity for the food product commonly known as egg yolk came up for hearing at 1:45 p. m., January 25, 1939, and was concluded at 3:00 p. m. on the same day. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

4. The Presiding Officer, therefore, makes this report and suggests that the Secretary make on the basis of substantial evidence contained in the record, the findings of fact herein contained, the conclusions herein suggested, and if so found, to order the promulgation of the regulation suggested herein.

5. The proposal, as it appeared in the FEDERAL REGISTER on December 15, 1938, concerned itself, *inter alia*, with a proposed reasonable definition and standard of identity for the food product commonly known as egg yolk. It read as follows:

> Egg yolk consists of a homogeneous, strained mixture of yolks broken out of the shell, after candling or otherwise sorting out unsound and unfit eggs, and with rejection, after breaking, of any remaining unsound and unfit eggs; so separated from whites as to yield a minimum egg solids content of ---- percent (to be fixed at a point between forty-three percent and forty-five percent); and packed in a suitable container.

6. Within the time so provided, various interested persons filed proposed findings of fact. The proposed findings of fact concerned: (1) The synonymity of terms, (2) The limited field of sale, (3) The egg solids content.

7. There was no substantial controversy in the evidence.

It is deemed, however, proper to detail the manufacturing process which is as follows:

> That such eggs are chilled to aid in separating the white and yolk; that they are candled before breaking the shell and any bad eggs removed; that the shell of the egg is so broken that the yolk is permitted to drop into a cup sufficiently small to retain the yolk and necessitate the white of the egg draining over the rim; that a circular cutting device is then brought down over the rim of the cup which clips or cuts much of the white from the yolk; that this cutting operation repeated will decrease the amount of white adhering to the yolk; that such yolk is then flipped into a larger cup and when two or three yolks have been collected in the larger cup they are smelled to detect any having objectionable odors; that if yolks having objectionable odors are detected the contents of the larger cup are destroyed and such cup thoroughly washed; that if no objectionable odors are detected the yolks are then placed in ten-pound or thirty-pound cans, filled to the required weight, covers placed on the cans and delivery made to the consumer as soon thereafter as possible; that, prior to delivery to the consumer, the yolk may be mixed, or mixed and strained; and that, prior to such delivery a determination may be made of the solids content of the yolk to ascertain the completeness of the separation of the white from the yolk. (R. pp. 15–17, 21–27, 37–44)

8. Because of the substantial agreement of the evidence, it is not deemed necessary to summarize the evidence except as indicated by references to the transcript in the suggested findings.

9. Therefore, the Presiding Officer suggests that an order be made and entered by the Secretary of Agriculture

setting forth the detailed findings of fact hereinafter suggested as part of such order, and promulgating the regulation hereinafter set forth.

Suggested Findings

1. That in the preparation of Egg Yolk, the product of domestic hens, or hens' eggs, are used. (R. pp. 22, 45)

2. That, except for freezing, the methods of preparation and separation of hens' eggs for Egg Yolk and Frozen Egg Yolk are the same. (R. p. 27)

3. That Egg Yolk, Liquid Egg Yolk, Yolk, Liquid Yolk, are all synonyms for the food product defined by witnesses and for the food product described in the FEDERAL REGISTER of December 15, 1938, at page 3012, under the designation Egg Yolk. (R. pp. 31, 35, 45, 49)

4. That a definition and standard of identity for Egg Yolk or any of its synonyms based upon a total solids determination would be reasonable and would promote honesty and fair dealing in the interest of consumers, in that, it would set a maximum limit on the amount of egg white adhering to the yolk and prevent the addition of cheapening ingredients. (R. pp. 30, 50)

5. That it would be reasonable and would promote honesty and fair dealing in the interest of consumers in defining and standardizing Egg Yolk or any of its synonyms to specify the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, pages 297 and 298, under "Total Solids" as the method to be used in determining total egg solids in Egg Yolk or any of its synonyms for the reason that such method is satisfactory and reliable for the determination of egg solids in such product. (R. pp. 30–31, 47)

6. That a definition and standard of identity for Egg Yolk or any of its synonyms requiring a total egg solids of not less than forty-three percent would be reasonable and would promote honesty and fair dealing in the interest of consumers, in that, it would require such a separation of white and yolk that the food product would not contain excess white and it would conform to consumer understanding of the article. (R. pp. 30, 50)

Suggested Conclusions in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable definition and standard of identity for the food products commonly known as egg yolks, liquid egg yolks, yolks, liquid yolks, is hereby suggested to be promulgated as a regulation in order to promote honesty and fair dealing in the interest of consumers:

Egg Yolks, Liquid Egg Yolks, Yolks, Liquid Yolks, are yolks of eggs of the domestic hen so separated from the whites thereof as to contain not less than forty-three percent total egg solids, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, pages 297 and 298, under "Total Solids." They may be mixed, or mixed and strained.

Time Within Which To File Objections

Within ten days after the receipt by registered mail of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion and order, shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the Presiding Officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN McDILL FOX,
Presiding Officer.

APRIL 27, 1939.

[F. R. Doc. 39–1537; Filed, May 5, 1939; 1:07 p. m.]

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH A REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: EGGS, LIQUID WHOLE EGGS, LIQUID MIXED EGGS, FROZEN WHOLE EGGS, DRIED WHOLE EGGS, EGG YOLK, FROZEN EGG YOLK, DRIED EGG YOLK

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSION AND ORDER RELATIVE TO FROZEN EGG YOLK

General Statement

1. In pursuance of the authority of subsection (e) Section 701, of the Federal Food, Drug and Cosmetic Act (Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e), the Secretary of Agriculture on his own initiative published on December 15, 1938, which appeared on Page 3011, of the FEDERAL REGISTER, a notice of a public hearing to be held on January 23, 1939, in Room 3036, Department of Agriculture, South Building, Independence Ave., between 12th and 14th Sts., S. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: Eggs, Liquid Whole Eggs, Liquid Mixed Eggs, Frozen Whole Eggs, Dried Whole Eggs, Egg Yolk, Frozen Egg Yolk, Dried Egg Yolk. This notice contained a proposal in general terms for a reasonable definition and standard of identity that would promote honesty and fair dealing in the interest of consumers for each of such foods. The notice designated John McDill Fox and Mr. Daniel P. Willis as Presiding Officers to conduct in the place of the Secretary the foregoing hearing. Thereafter, a public hearing was held at the time and place therein designated, and John McDill Fox served as Presiding Officer. (R. p. 6; Government's Exhibit No. 1)

2. At said hearing the Presiding Officer announced that he would hold hearings on various egg products at times to be announced during the course of the various hearings.

3. Pursuant to this announcement, the hearing for the purpose of receiving evidence on the basis of which a regulation may be promulgated fixing and establishing a definition and standard of identity for the food product commonly known as frozen egg yolk came up for hearing at 9:40 a. m., January 25, 1939, and was concluded at 12:30 p. m. on the same day. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

4. The Presiding Officer, therefore, makes this report and suggests that the Secretary make on the basis of substantial evidence contained in the record, the findings of fact herein contained, the conclusions herein suggested, and if so found, to order the promulgation of the regulation suggested herein.

5. The proposal, as it appeared in the FEDERAL REGISTER on December 15, 1938, concerned itself, *inter alia*, with a proposed reasonable definition and standard of identity for the food product commonly known as frozen egg yolk. It read as follows:

> Frozen egg yolk consists of a homogeneous, strained mixture of yolks broken out of the shell, after candling or otherwise sorting out unsound and unfit eggs, and with rejection, after breaking, of any remaining unsound and unfit eggs; so separated from the whites as to yield a minimum egg solids content of ____ percent (to be fixed at a point between forty-three percent and forty-five percent); packed in a suitable container; and frozen in such a manner as to prevent spoilage.

6. Within the time so provided, various interested persons filed proposed findings of fact. The proposed findings of fact concerned: (1) The synonymity of terms, (2) The degree of egg solids, (3) The method of determining the solids.

7. There was controversy with reference to the method of determining the egg solid content. There was, likewise controversy with reference to certain products denominated as sugar yolk and salt yolk.

8. Testimony was given which described in detail what the food product commonly known as frozen egg yolk is, how it is prepared.

Mr. Callaway, a Government witness, who is a senior chemist in the Food and

Drug Administration, United States Department of Agriculture, and Secretary of the Foods' Standards Committee of the Food and Drug Administration, testified substantially as follows:

After he had qualified himself as an expert, with reference to his early training at Alabama Polytechnic Institute, Pasteur Institute, Paris, France, and Columbia University, he detailed his experience with the Department. It appears that he entered the Bureau of Chemistry of the Department of Agriculture in 1914; and except for a brief interruption for war service, has been continuously with the Department. During such time he had many occasions to observe the methods of manufacture of frozen egg yolk in various plants operating in the eastern third of the United States, and likewise had occasion to supervise the laboratory chemical examination of a great many samples of frozen egg yolk.

As secretary of the Food Standards Committee of the Food and Drug Administration, he plans and directs field and laboratory investigations in order to develop the methods of manufacturing and the composition of various foods which are being studied with a view to standardization, receiving reports of field representatives, both analysts and inspectors, which reports he studies and correlates in order to facilitate their use. He also consults with representatives of the trade and consumer organizations in a further effort to secure information helpful in the consideration of proposals leading to the standardization of food.

The origin and history of the "Food Standards Committee" was then traced by the witness. From his testimony it appeared that prior to the passage of the Food and Drugs Act of 1906, there was no uniformity with respect to definitions and standards for various food products. The Association of Official Agricultural Chemists had, however, appointed a committee whose duty it was to formulate standards of purity for various food products. The Secretary of Agriculture took advantage of the services of this committee and was authorized by law at various times to do this.

With the passage of the Food and Drugs Act of 1906, the Secretary of Agriculture appointed an advisory committee, the members of which were selected from the Association of Official Agricultural Chemists and from the Association of State and National Food and Dairy Departments and from the Bureau of Chemistry. There was assigned to this Committee the task of promoting the making of food standards. This body functioned for a short time and finally ceased to exist in the latter part of 1907.

In 1913, the Association of American Dairy, Food and Drug Officials adopted a resolution urging the creation of a Food Standards Committee to take, in a way, the place of the committee which had functioned in the past. In response to this resolution, the Secretary, in 1913, created such a committee. It was called a Joint Committee on Food Standards and its members were selected three each from the Association of Dairy, Food and Drug Officials, the Association of Official Agricultural Chemists and the Bureau of Chemistry of the United States Department of Agriculture. This committee functioned in an advisory capacity from its creation in 1913, until the passage of the Food, Drug, and Cosmetic Act of 1938. The new Food, Drug, and Cosmetic Act does not provide for a Food Standards Committee, but the valuable service rendered by the Food Standards Committee in the past prompted the Secretary of Agricutlure to create a new Food Standards Committee. This new committee, of which the witness is secretary, is composed of six members, two from the Association of Dairy, Food and Drug officials, two from the Association of Official Agricultural Chemists, and two from the Food and Drug Administration of the Department of Agriculture.

The chief purpose of the Committee is to serve in an advisory capacity on food standards. This Committee meets at the call of the Chief of the Food and Drug Administration and studies factual information which had been collected by the Food and Drug Administration.

In addition, the Committee studies the official factory inspection reports which have been submitted by representatives of the Food and Drug Administration in the course of regular visits having to do with the inspection of various plants manufacturing food products in various parts of the country.

The Committee also studies the reports of chemical analysis of foods made by regularly authorized analysts of the Food and Drug Administration. It also confers with trade representatives, representatives of consumer organizations and trade associations in an attempt to secure all available information which will be helpful in the formulation of food standards.

On the basis of all information and evidence available, it assists the Food and Drug Administration in the formulation of proposals leading toward the standardization of food.

The history and regulatory problem which the Department had in connection with frozen egg yolks is as follows:

When eggs were first broken out for freezing it was customary to prepare only frozen whole eggs. The first commercial demand for a separated product came from the users of egg white. This egg white has a wide use in candy and pie making and certain types of cakes. The yolk resulting from the separation went to bakers who used them in a variety of bakery products.

In recent years, as the production of mayonnaise has increased, the demand for egg yolk has resulted in more separation into yolk and white. Manufacturers of egg noodles have also come to use frozen egg yolks to a large extent, where previously they had used imported dried eggs or dried yolk. The increased use of yolk has brought about a certain over supply of egg white.

Under these conditions, it is profitable to obtain as large a yield of yolk as possible. This can be done only by leaving a considerable amount of adhering white. So, many egg breakers have left as much white in the yolk as their customers would tolerate. Bakers who use yolk largely interchangeably with whole egg, do not demand as complete a separation of whites as certain other users. The mayonnaise manufacturers want a stiff yolk, as stiff as possible, and this means as complete a separation of white as can commercially be made. The egg noodle manufacturers want as much color as possible and this necessitates a complete separation of the white. The mayonnaise industry, particularly, sought means of testing the product sold to them so that they could be sure that they were not getting excessive white with the yolk.

Egg white contains roughly about eighty-seven and one-half percent water and twelve and one-half percent of material in solution, most of which is albumen. Egg yolk from fresh eggs, where the white has been completely separated, contains roughly about fifty percent water and fifty percent solid matter. This solid matter is a mixture of egg fat, lecithin, and various proteins. A determination of the total solids in a mixture of yolks and whites serves as a good indication of the relative amount of each.

Some years ago, members of the egg trade found that the amount of egg solids could be determined very rapidly and with a fair degree of accuracy by the use of the refractometer. Manufacturers of refractometers now put out special instruments for use in determining solids in this type of egg material. The percentage of solids has become the trade measure of the completeness of the separation of the white from the yolk.

Investigations were made by the Food and Drug Administration in 1930, 1931 and 1932, with the idea of determining how much egg white remained with the egg yolk under good commercial methods of separation. Investigations of the composition of eggs were also made with the idea of laying a foundation for the detection of the addition of foreign materials such as salt, sugar and glycerin. Chemists in the Food and Drug Administration did not at that time use total solids as a means of determining the amount of white and yolk in mixtures, but usually used the water soluble nitrogen content and the phosphorous content as a basis for this calculation.

Scientific papers dealing with the composition of eggs and methods for calculating the relative amounts of whites and yolks, were published in the Journal of the Association of Official Agricultural Chemists at various times.

These included a paper by L. C. Mitchell, entitled, "A Study of the Composition of Shell Eggs," published in the

Journal of the Association of Official Agricultural Chemists in May, 1932.

Another paper by L. C. Mitchell, entitled, "Progressive Changes in the Composition of Edible Shell Eggs during Storage," published in the Journal of the Association of Official Agricultural Chemists in August, 1934.

Another paper by Mitchell, Alfend & McNall, entitled, "The Composition of Whites, Yolks and Whole Eggs Broken out by Commercial Egg Breaking Establishments," published in the Journal of the Association of Official Agricultural Chemists in May, 1933.

A paper by F. H. Voorhees, Jr., entitled, "A Statistical Treatment for Establishing the Accuracy of Method of Interpreting Analytical Results with special reference to Egg Products," published in the Journal of the Association of Official Agricultural Chemists in February, 1935.

In 1931, the Food Standards Committee first studied the question of standardizing egg products. Later, on the basis of information furnished by the Food and Drug Administration covering work done with frozen egg yolks in 1931 and 1932, the Food Standards Committee in 1935 recommended a definition and standard for frozen egg yolks which limited the amount of egg white which would be permissible in the egg yolk, to twelve percent. This recommendation was promulgated by the Secretary of Agriculture in 1936 as an Advisory Standard, as a guide for officials of the Food and Drug Administration in the enforcement of the Food and Drugs Act.

No method was announced at that time for determining the percentage of egg white in frozen egg yolks, but if the standard of twelve percent white as permitted is calculated on the basis of total egg solids, it would require the frozen egg yolks to have a solid content of from forty-five to forty-six percent, a minimum solid content of from forty-five to forty-six percent.

In 1933, Mitchell, Alfend & McNall published the results of an investigation showing that commercial egg breakers could produce, if they desired, egg yolks with twelve percent white or less, or in terms of solids, with forty-five or more percent of egg solids.

A survey of factory methods and producer and consumer understanding of the food product commonly known as frozen egg yolk was conducted.

Representatives of the Food and Drug Administration called upon consumers of frozen egg yolk in various parts of the country and secured from them information as to what they expected when they were purchasing frozen egg yolks. They submitted reports upon the information received. At least eighty-six consumers so visited were made the subject of reports which were forwarded to the witness. In addition, representatives of the Food and Drug Administration called upon fifty-six egg breaking plants where frozen egg yolks were being prepared. They observed the factory process of preparing the frozen yolks, they conferred with the officials of the management, and secured information as to their general practices. This information was written up in the form of official reports and these were referred to the witness.

The reports were present in the hearing room and were available for examination.

A summary of the reports was prepared and read as evidence.

Field representatives of the Food and Drug Administration interviewed at least eighty-six consumers of frozen egg yolk. These consumers were principally manufacturers of mayonnaise, salad dressing, egg noodles and bakers. Probably bakers consume about one-half of the frozen egg yolks produced in the United States and the mayonnaise and egg noodle manufacturers the greater part of the remaining egg. The consumers visited were located in Indiana, Minnesota, Louisiana, Texas, Missouri, Nebraska, Kentucky, Illinois, Ohio, Pennsylvania, Virginia, Maryland, District of Columbia, Georgia, Florida, Massachusetts, New York, New Jersey, California, Oregon, Washington, Utah and Colorado.

All of the consumers visited, with one exception, stated that they expected egg yolks to be produced from hens' eggs. One baker stated that he did not care what kind of eggs he received, provided they were fresh, but that actually he was receiving yolks from hens' eggs.

Twenty-three consumers stated that in purchasing frozen egg yolks they specified a certain egg solid content. The other consumers stated that they did not make any definite specifications as to egg solids in making their purchases.

Of those who specified solids, one specified not less than forty-two percent solids; four specified not less than forty-three percent solids; five specified not less than forty-four percent solids; twelve specified not less than forty-five percent solids; and one specified not less than forty-six percent solids.

A considerable number of the consumers purchased mixtures of the egg yolk with sugar or salt. The usual term applied by the consumers to frozen egg yolks with sugar was found to be "sugared yolks." Those containing salt were found to be known as "salted yolks."

Field inspectors of the Food and Drug Administration also visited fifty-eight egg breaking plants which were producing frozen egg yolks. These plants visited were distributed over the following States: Ohio, Indiana, Kentucky, Minnesota, Missouri, Texas, Illinois, Pennsylvania, Massachusetts, New York, California, Washington, Idaho, Oregon, Colorado and Utah.

According to the published report of Mr. J. H. Radabaugh, Associate Agricultural Economist, Poultry Section, Agricultural Adjustment Administration, of the United States Department of Agriculture, there were in 1937, one hundred ninety-six plants reported as actively engaged in the breaking of eggs for freezing.

It is not known exactly how many of these plants are actively engaged in the breaking and the freezing of the egg yolks at the present time, but the number of plants actually visited represents a good proportion of the plants engaged in this industry. The witness believes that the plants visited will be a good representative cross section of the industry producing frozen egg yolks.

In many of the plants visited, the inspector of the Food and Drug Administration observed the entire breaking, separating and freezing process, and made an official report on the methods and practices used.

In some of the plants, the inspector did not have an opportunity to observe the entire process of preparing the frozen egg yolks, but the process was described by an official of the company, and a report of the method, as described, was made and forwarded to the witness.

The following standard method of preparation is in use, with a few minor variations:

Hens' eggs are universally used with possibly an occasional mixture of guinea, duck or turkey eggs. Guinea, duck or turkey eggs do not lend themselves readily to the separation of the yolk and white in the separating cups used for hens' eggs, and so usually, when such eggs are encountered in current receipts, if they are to be used, they are used in the preparation of frozen whole eggs.

From the information reported, the use of any eggs other than hens' eggs in the preparation of frozen yolks is negligible.

Before breaking, the eggs are chilled to aid in separating the whites and yolks. They are candled to remove any bad eggs. The eggs are then broken out one at a time and the liquid contents placed in some type of separating cup which allows the white to run over the side and the yolk to remain in the cup. Some separating devices have a kind of rim which can be made to fit down around the sides of the cup and so aid in clipping or cutting off the white.

After removal of the white, the yolks usually, after smelling to remove any unfit eggs, are combined and thoroughly mixed in some type of power churn. The mixture is run through a screen to remove any extraneous material, and frozen in cans containing thirty pounds of yolk. A freezing temperature usually from 0 to −15 degrees Fahrenheit is used.

Some variation from this procedure was that some breakers did not chill and some did not candle before breaking. Variations affecting identity had to do with the care taken in removing the whites from the yolks, and the addition to the yolk of such material as salt, sugar and glycerin. By manipulating the instrument used for separating, the operator can change the amount of adhering white within certain limits. Most of the large egg breakers, preparing frozen yolks, check the separation of whites from yolks by refractometer readings. Some, however, made no definite check of solid content.

Of the firms visited, nineteen said that they made a definite check on solids in the yolks before the product was frozen. Where the solid content was checked, some of the firms reported that they made only one grade of yolk, standardizing to a definite solid content; whereas other firms made two or more grades with varying solid content, depending upon the desires of their customers.

It was generally stated that bakers as a rule did not demand as complete a separation and that the yolks sold to bakers usually contained forty-two to forty-three percent solids.

Manufacturers of mayonnaise and egg noodles were said, as a rule, to be very particular about securing a complete separation of yolk and white, and yolk manufactured for such users usually contained forty-five percent solids.

A further investigation of the composition of frozen egg yolk was conducted, based upon the results of analysis on samples of products labeled or sold as plain frozen egg yolks, which have been collected and examined by representatives of the Food and Drug Administration during 1936, 1937 and 1938. These samples were collected and examined primarily for the purpose of determining whether there had been any adulteration of the egg yolk, particularly by excessive egg white.

The results of the analysis were tabulated. The tabulation shows the total egg solid content as determined by the Association of Official Agricultural Chemists method, rather than the method used by the trade, or usually used by the trade where the refractometer is used.

The A.O.A.C. method consists of actually drying a portion of the product, and, in the opinion of the witness, gives a much more accurate determination of the solids than the refractometer.

In addition to solids, fat by acid-hydrolysis was determined by the A.O.A.C. method as described in the Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists, page 299, Sections 8 and 9. (The portion of the publications referred to is as follows (Page 299)):

"*Fat by Acid Hydrolysis—Tentative.* Preparation of Solution.

"8. (a) *Liquid eggs.* From the well-mixed sample, 1 (a) or (b), weigh accurately by difference into a fat extraction tube (Mojonnier tube is convenient) approximately 2 g of yolks, or 3 g of whole eggs, or 5 g of whites. Add slowly with vigorous shaking 10 cc of HCl, set the tube into a water bath heated to 70°, bring to boiling, and continue the heating at boiling for 30 minutes, shaking the tube with care at 5 minute intervals. Remove the tube from the water bath, add H_2O nearly to fill the lower bulb of the tube, and cool to room temperature.

"(b) *Dried eggs.* Transfer 1 g of the well-mixed sample to the fat extraction tube; add slowly, washing down any egg particles adhering to the sides of the tube, 10 cc of HCl (4+1); and proceed as directed in (a).

"9. *Determination.* To the extraction tube containing the sample treated as directed under 8, add 25 cc of ethyl ether, and mix. Add 25 cc of redistilled petroleum ether (b. p. below 60°), mix, and allow to stand until the ether layer is clear. Decant and clear ether layer into a weighed 125 cc beaker flask containing 2–3 small porcelain chips, and evaporate the ethers slowly on a water bath. Re-extract the liquid remaining in the tube twice more, using 15 cc of each ether and mixing after the addition of each ether. Allow to stand until the ether layer is clear, decant into the 125 cc beaker flask, and evaporate slowly on a water bath. Dry the beaker flask and contents at 100° to minimum weight (approximately 90 min.). Allow the flask to stand in the air until no further change in weight takes place (approximately 30 min.), and weigh. Correct this weight by a blank determination on the reagents. Report as percentage of fat by acid hydrolysis."

These statements were taken at random by inspectors of the Food and Drug Administration to determine the composition of the frozen egg yolk on the market, with particular reference to the proportion of egg white to yolk.

Consideration of these samples shows that there is considerable variation in the solids content and in the fat. Either of these constituents of egg yolk might be used as a means of determining the relative amount of egg white. The determination of total solids is much simpler and a fairly accurate, rapid determination can be made with the refractometer. The determination of fat is more difficult, and since the trade uses the solids content as a basis of establishing standards for buying and selling types of frozen egg yolk, the witness believes that it would be desirable for a definition and standard for frozen egg yolk to utilize total solids as a basis of standardization rather than fat.

A consideration of the total solids content of the samples showed that it varied on frozen egg yolks produced in the United States from forty-two percent to a little over forty-eight percent. On a few samples of frozen egg yolk imported from China, the solids varied from forty-six percent to about forty-eight and one-half percent.

These variations are in general agreement with information obtained from the manfacturers as to variations in total solids in the product which they manufacture.

Other witnesses substantially corroborated Mr. Callaway's testimony.

From the testimony of Mr. Ralph Morris (R. p. 64), it would seem that the figure forty-three and one-half percent for the minimum solids basis which was given by Mr. Lepper, a Government witness, was corroborated.

From the various testimony, it would appear that the term sugar yolk or salt yolk would apply to a different product.

9. Therefore, the Presiding Officer suggests that an order be made and entered by the Secretary of Agriculture setting forth the detailed findings of fact hereinafter suggested as part of such order, and promulgating the regulation hereinafter set forth.

Suggested Findings

1. Egg white contains roughly about eighty-seven and one-half percent of water and twelve and one-half percent of material in solution, most of which is albumen. Egg yolks from which the whites have been completely separated contain roughly about fifty percent of water and fifty percent of solid matter. This solid matter is a mixture of egg fat, lecithin, and various proteins. (R. pp. 14, 49, and 50)

2. Commercial egg breakers determine the amount of adhering white in egg yolk by determining the total solids in egg yolk. (R. pp. 14, 49, and 50)

3. Commercial egg breakers can produce, under ordinary commercial practices, egg yolks with twelve percent whites, or less; or, in terms of solids, egg yolks with forty-five percent or more egg solids. (R. pp. 15, 16, 17, 49, and 50)

4. In 1933, the Food Standards Committee recommended a definition and standard for frozen egg yolk which limited the amount of egg white which would be permissible in egg yolk to twelve percent. This recommendation was later promulgated by the Secretary of Agriculture in 1936, in the form of an advisory standard. (R. p. 16)

5. Hen eggs are universally used in the preparation of frozen egg yolk. Guinea, duck, and turkey eggs do not lend themselves readily to the preparation of frozen egg yolk, because the separating cups used for the separation of whites and yolks are made for hen eggs and do not work well in the separation of the other sizes and types of eggs. The use of any eggs other than hen eggs in the preparation of frozen egg yolk is negligible. (R. pp. 20, 22, 49, and 50)

6. Eggs are broken one at a time and the liquid contents of the shell placed in some type of separating cup which allows the white to run over the sides of the cup and the yolk to remain in the cup. Most separating devices have a cutting rim which can be used to fit around the sides of the cup and thus clip off the white from the yolk. By manipulating this instrument, the operator can decrease the amount of adhering white. (R. pp. 23, 49, and 50)

7. Yolks are usually thoroughly mixed in some type of power churn, and this

mixture is run through a screen for the purpose of removing any extraneous material. (R. pp. 23, 49, and 50)

8. The churned and screened yolk is placed in thirty-pound containers and frozen, usually at a temperature varying from zero to minus fifteen degrees Fahrenheit. (R. pp. 23, 49, and 50)

9. Most egg-breaking plants check the degree of completeness of separation of white from yolk by determining, by means of a refractometer, the solid content of the yolk. (R. p. 23)

10. Domestic frozen egg yolk varies in solid content from forty-two percent to forty-eight and one one-hundredth percent, as determined by the Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists, page 299, Section 849 (Government's Exhibit No. 5).

11. Chinese samples of frozen egg yolk show a solid content ranging between forty-six and eight-tenths and forty-eight and fifty-two one-hundredths percent (Government's Exhibit No. 5).

12. The minimum solid content for frozen egg yolks should be forty-three percent total solids, for the reason that such a solid content is easily obtainable under commercial practice and at the same time will satisfy the general demands of the consumers. Those users of the product who, for special purposes, desire a higher solid content have followed the practice of buying under a contract stipulating the solid content desired. (R. pp. 34, 36, 58, 59, 60, 78, 81, and 82)

13. A standard which fixes the minimum solid content of frozen egg yolk at any point between forty-three and forty-five percent would be reasonable. (R. pp. 36 and 52)

14. The method of determining total solids, as set forth in the book entitled "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," page 297, Sections 1, 2, and 3 (R. pp. 28 and 29), is an accurate, reasonable, and suitable method for the determination of total solids in frozen egg yolk (R. pp. 25, 37, 38, 39, and 40).

Suggested Conclusions in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable definition and standard of identity for the food product commonly known as frozen egg yolk, is hereby suggested to be promulgated as a regulation in order to promote honesty and fair dealing in the interest of consumers:

> Frozen Egg Yolk is the yolk of the egg of the domestic hen so separated from the whites thereof as to contain not less than forty-three percent total egg solids, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, pages 297 and 298, under "Total Solids." They may be mixed, or mixed and strained. They are frozen.

Time Within Which to File Objections

Within ten days after the receipt by registered mail of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion and order, shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the Presiding Officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

APRIL 28, 1939.

[F. R. Doc. 39-1536; Filed, May 5, 1938; 1:06 p. m.]

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH A REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: EGGS, LIQUID WHOLE EGGS, LIQUID MIXED EGGS, FROZEN WHOLE EGGS, DRIED WHOLE EGGS, EGG YOLK, FROZEN EGG YOLK, DRIED EGG YOLK

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSION AND ORDER RELATIVE TO DRIED EGG YOLK

General Statement

1. In pursuance of the authority of subsection (e), Section 701, of the Federal Food, Drug and Cosmetic Act (Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)), the Secretary of Agriculture on his own initiative published on December 15, 1938, which appeared on page 3011, of the FEDERAL REGISTER, a notice of a public hearing to be held on January 23, 1939, in Room 3036, Department of Agriculture, South Building, Independence Ave., between 12th and 14th Sts., S. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: Eggs, Liquid Whole Eggs, Liquid Mixed Eggs, Frozen Whole Eggs, Dried Whole Eggs, Egg Yolk, Frozen Egg Yolk, Dried Egg Yolk. This notice contained a proposal in general terms for a reasonable definition and standard of identity that would promote honesty and fair dealing in the interest of consumers for each of such foods. The notice designated John McDill Fox and Mr. Daniel P. Willis as Presiding Officers to conduct in the place of the Secretary the foregoing hearing. Thereafter, a public hearing was held at the time and place therein designated, and John McDill Fox served as Presiding Officer. (R. p. 6; Government's Exhibit No. 1)

2. At said hearing the Presiding Officer announced that he would hold hearings on various egg products at times to be announced during the course of the various hearings.

3. Pursuant to this announcement, the hearing for the purpose of receiving evidence on the basis of which a regulation may be promulgated fixing and establishing a definition and standard of identity for the food product commonly known as dried egg yolk came on for hearing at 10:50 a. m., January 26, 1939, and was concluded at 12:40 p. m., on the same day. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

4. The Presiding Officer, therefore, makes this report and suggests that the Secretary make on the basis of substantial evidence contained in the record, the findings of fact herein contained, the conclusions herein suggested, and if so found, to order the promulgation of the regulation suggested herein.

5. The proposal, as it appeared in the FEDERAL REGISTER on December 15, 1938, concerned itself, *inter alia*, with a proposed reasonable definition and standard of identity for the food product commonly known as dried egg yolk. It read as follows:

> Dried egg yolk consists of a homogeneous, strained mixture of yolks broken out of the shell, after candling or otherwise sorting out unsound and unfit eggs, and with rejection, after breaking, of any remaining unsound and unfit eggs; so separated from whites as to yield, in the finished product, a minimum fat content on the dry basis of ____ percent (to be fixed at a point between fifty-eight and five-tenths percent and sixty percent); dried to a maximum moisture content of ____ percent (to be fixed at a point between four and five-tenths percent and five and five-tenths percent); and packed in a suitable container.

6. Within the time so provided, various interested persons filed proposed findings of fact. The proposed findings of fact concerned: (1) The kind of eggs used, (2) The moisture content, (3) The minimum total solid requirement, (4) The relation of fats and solids.

7. There was controversy with reference to moisture content and relation of fats and solids.

8. Testimony was given which described in detail what the food product commonly known as dried egg yolk is, how it is prepared.

Mr. Callaway, a Government witness, who is a senior chemist in the Food and Drug Administration, United States Department of Agriculture, and Secretary of the Foods' Standards Committee of the Food and Drug Administration, testified substantially as follows:

After he had qualified himself as an expert, with reference to his early training at Alabama Polytechnic Institute, Pasteur Institute, Paris, France, and Columbia University, he detailed his experience with the Department. It appears that he entered the Bureau of Chemistry of the Department of Agriculture in 1914; and except for a brief interruption for war service, has been continuously with the Department. During such time he had many occasions to observe the methods of manufacture of dried egg yolk in various plants operating in the eastern third of the United States, and likewise had occasion to supervise the laboratory chemical examination of a great many samples of dried egg yolk.

As secretary of the Food Standards Committee of the Food and Drug Administration, he plans and directs field and laboratory investigations in order to develop the methods of manufacturing and the composition of various foods which are being studied with a view to standardization, receiving reports of field representatives, both analysts and inspectors, which reports he studies and correlates in order to facilitate their use. He also consults with representatives of the trade and consumer organizations in a further effort to secure information helpful in the consideration of proposals leading to the standardization of food.

The origin and history of the "Food Standards Committee" was then traced by the witness. From his testimony it appeared that prior to the passage of the Food and Drugs Act of 1906, there was no uniformity with respect to definitions and standards for various food products. The Association of Official Agricultural Chemists had, however, appointed a committee whose duty it was to formulate standards of purity for various food products. The Secretary of Agriculture took advantage of the services of this committee and was authorized by law at various times to do this.

With the passage of the Food and Drugs Act of 1906, the Secretary of Agriculture appointed an advisory committee, the members of which were selected from the Association of Official Agricultural Chemists and from the Association of State and National Food and Dairy Departments and from the Bureau of Chemistry. There was assigned to this Committee the task of promoting the making of food standards. This body functioned for a short time and finally ceased to exist in the latter part of 1907.

In 1913, the Association of American Dairy, Food and Drug Officials adopted a resolution urging the creation of a Food Standards Committee to take, in a way, the place of the committee which had functioned in the past. In response to this resolution, the Secretary, in 1913, created such a committee. It was called a Joint Committee on Food Standards and its members were selected three each from the Association of Dairy, Food and Drug Officials, the Association of Official Agricultural Chemists and the Bureau of Chemistry of the United States Department of Agriculture. This committee functioned in an advisory capacity from its creation in 1913, until the passage of the Food, Drug, and Cosmetic Act of 1938. The new Food, Drug, and Cosmetic Act does not provide for a Food Standards Committee, but the valuable service rendered by the Food Standards Committee in the past prompted the Secretary of Agriculture to create a new Food Standards Committee. This new committee, of which the witness is secretary, is composed of six members, two from the Association of Dairy, Food and Drug officials, two from the Association of Official Agricultural Chemists, and two from the Food and Drug Administration of the Department of Agriculture.

The chief purpose of the Committee is to serve in an advisory capacity on food standards. This Committee meets at the call of the Chief of the Food and Drug Administration and studies factual information which had been collected by the Food and Drug Administration.

In addition, the Committee studies the official factory inspection reports which have been submitted by representatives of the Food and Drug Administration in the course of regular visits having to do with the inspection of various plants manufacturing food products in various parts of the country.

The Committee also studies the reports of chemical analysis of foods made by regularly authorized analysts of the Food and Drug Administration. It also confers with trade representatives, representatives of consumer organizations and trade associations in an attempt to secure all available information which will be helpful in the formulation of food standards.

On the basis of all information and evidence available, it assists the Food and Drug Administration in the formulation of proposals leading toward the standardization of food.

The first experience of the witness with dried egg yolk began while he was doing analytical work with the various stations in the Bureau of Chemistry. In about 1930, problems arose in connection with the importation of dried egg yolk and dried whole egg from China. Since then he has carried on studies in connection with dried egg yolk, supervised actual laboratory experiments in the preparation of dried egg yolk, read and devised reports of inspections of plants in the United States.

A survey was conducted under the supervision of the witness of factory methods and producer understanding of the food commonly known as dried egg yolk.

Representatives of the Food and Drug Administration visited egg drying plants located in Missouri, Nebraska, Texas, Washington and California, and where possible, observed the methods of drying egg yolks. They conferred with the officials of the companies manufacturing this product and secured all available information about the methods of manufacture. The information secured was reported in the form of official reports.

In addition, the representatives of the Food and Drug Administration interviewed consumers of dried egg yolk in various parts of the United States and obtained from them information as to what they expected on purchasing dried egg yolk, and, to some extent, what uses there were for this product. At least seventy such consumers were visited and reports made. These reports were present in the hearing room and marked for identification and were available for examination by interested parties.

Based on these reports, the witness testified from the prepared summary as follows:

There are relatively few firms in the United States engaged in the drying of egg yolk. Some of the plants are located in the Middle West and a few in the Far West. In connection with the survey of the egg drying industry, field inspectors of the Food and Drug Administration visited egg drying plants located in Missouri, Nebraska, Texas, Washington and California.

The methods as seen or described were essentially the same. Hens' eggs from current receipts, together with such checks and cracks as might be available, are chilled, candled and the eggs unfit for food separated, the remainder broken out with the further rejection of eggs considered inedible by smell. The whites and yolks are then separated.

In order successfully to dry yolks, it is necessary to have a thorough separation of whites. For this reason, manufacturers of dried egg yolk require operators to make as complete a separation as possible. Mechanics of separating are the same as in the instance of frozen egg yolk except uniformly more care is exercised in the separation than is usually given for ordinary frozen egg yolk.

In most instances where the separating cup is used with the clipping device, at least two clips are given for the separation of the yolk for drying. The liquid yolk, before drying, will usually run at least forty-six percent egg solids. The yolks are thoroughly mixed and strained and then spray-dried. This consists in forcing the liquid yolk through very small openings under high pressure so that the liquid material comes out in the form of a fine spray. This spray enters at the top of a large chamber and warm, dry air comes in at the bottom. The sprayed material dries as it falls toward the bottom and accumulates in the chamber as an impalpable yellow powder. This is collected and usually put through screens to remove any lumps and then packed in suitable containers.

All of the manufacturers who gave information on the subject reported that when properly carried out this process results in the preparation of a dried product containing less than five percent moisture.

Analyses of selected samples were made. These analyses showed moisture and fat as determined by what is known as the acid hydrolysis method. The witness directed that the fat be calculated on the basis of the solids, or what is ordinarily known as fat on the dry basis.

In order to secure information as to consumer understanding of dried egg yolk, the inspectors of the Food and Drug Administration made visits to numbers of users of dried egg yolk and interviewed at least seventy persons who consumed dried egg yolk. These consumers were principally bakers, ice cream manufacturers, egg noodle manufacturers, and manufacturers of ready-mixed flours, particularly the so-called doughnut flour. They were located in various states including Colorado, Oregon, California, Washington, New York, Georgia, Michigan, Maryland, Pennsylvania, Minnesota, Louisiana, Illinois, Missouri, Tennessee and Kentucky.

All of the firms reported that they expected the product to be dried to the point that it was not sticky and would not become mouldy due to moisture. There was not much definite information as to what was the actual moisture content. Only three of the firms actually specified a limit of moisture when purchasing dried egg yolk. One of these specified not more than two and seventy-five one-hundredths percent, one not more than four percent, and the other not more than five percent. Two of the firms buying, specified limits on what they called fat. One specified not less than fifty percent fat, whereas the other specified that the fat might vary from forty-six to sixty percent. As far as the information goes it would appear that that meant the fat on the product as purchased and not fat calculated through the dry basis.

The witness described what was meant by moisture. By moisture he referred to the material which is volatile when the sample is examined by the method outlined in the book entitled "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, page 297, Sections 2 and 3, "Total Solids."

Moisture would be obtained by subtracting the figure for total solids from one-hundred percent. The witness stated it to be his opinion that it would probably be better to refer uniformly to solids rather than conversely to the moisture, although in the trade the custom is to refer to moisture rather than the solids. The fat was described as being determined by a method given in the same book on page 299, Sections 8 and 9, the heading being "Fat by acid hydrolysis."

The witness, in his definition, spoke of total egg solids of not less than ninety-five percent. His explanation was that ninety-five percent total solids would correspond with five percent moisture within the range given in Government's Exhibit No. 1. He expressed the opinion that it would be better to specify solids rather than moisture, since the method used is designated as a method for determining total solids; that it would have advantages in that it would eliminate the moisture variations in using the fat as a means of determining whether there had been a separation between yolks and whites.

Mr. Lepper, a Government witness, testified substantially in corroboration of Witness Callaway.

After outlining his background, he testified that he has been with the Food Division of the Food and Drug Administration and its predecessor, the Bureau of Chemistry, the past twenty-five years, that his duties were to develop methods of analysis and the collection of data on the composition of authentic samples of food.

In addition, he has done a great deal of work on egg and egg products and foods in which eggs are an essential ingredient. He has published numerous papers on the composition and analysis of food, some of which were on egg and egg products. He is the Assistant Editor to the Food Section of the publication known as "Chemical Abstracts," the journal of the Association of Official Agricultural Chemists.

He testified that an egg solid content of ninety-five percent would be the most desirable for a standard for dried egg yolk, among other reasons, because, as it occurs on the market or in the trade, dried egg yolk conforms, with very few exceptions, to that solid content. The witness testified to a preference for standard dealing in egg solid than for a standard dealing in moisture content because "egg solid" more adequately and accurately describes the actual determination made. The chemist in his operations determines the residue on grind which is the solids of the product. The moisture figure is a calculation, and in all methods and reports, it is almost universally customary to refer to the results as solids.

Mr. Heaton, a witness on behalf of the Institute of American Poultry Industries, has been with the association for a number of years and has a very good background with reference to the matters germane to this hearing. He proposed a definition and standard of identity based upon a minimum egg solids content of forty-three percent for the yolks as broken out and dried. He further testified that he would have no objections to drying such product.

Mr. Kennedy, a witness on behalf of the Egg Products Association of America, Inc., subscribed to Mr. Heaton's definition of dried egg yolk insofar as was suggested that a product made of a forty-three percent egg solid yolk be dried and called a dried egg yolk. He further recommended, on cross examination, that frozen egg yolk could be removed from storage and dried, and that it would be economical for the use of the consumer as well as the manufacturer.

9. Therefore, the Presiding Officer suggests that an order be made and entered by the Secretary of Agriculture setting forth the detailed findings of fact hereinafter suggested as part of such order, and promulgating the regulation hereinafter set forth.

Suggested Findings

1. Dried egg yolk is prepared from the yolks of the eggs of the domestic hen. (R. pp. 22, 31, 45)

2. The mechanics of separating yolks from whites are substantially the same as the process described in the preparation of egg yolk and frozen egg yolk, except that usually more care is exercised in the separation, in order to obtain egg yolk with as little adhering white as is commercially practical. (R. p. 22)

3. When eggs are received at egg-breaking plants, they are usually chilled as an aid in the separation of the white from the yolk. (R. p. 22)

4. Eggs are broken one at a time and the liquid contents of the shell placed in some type of separating cup which allows the white to run over the sides of the cup and the yolk to remain in the cup. Most separating devices have a cutting rim which can be used to fit around the sides of the cup and thus clip off the white from the yolk. By manipulating this instrument, the operator can decrease the amount of adhering white. (R. p. 22)

5. Yolks are thoroughly mixed in some type of power churn, and this mixture is run through a screen for the purpose of removing any extraneous material. (R. p. 22)

6. The thoroughly mixed and strained egg yolks are forced through a spray machine under high pressure, so that the liquid yolks enter a chamber in the form of a fine spray. This yolk spray enters at the top of the chamber. Warm, dry air is forced in at the bottom of the chamber, thus drying the spray as it falls, so that it is transformed into a yellow powder. This yellow powder is usually put through a screen in order to remove any lumps that may have accumulated in it, and then packed in suitable containers. When properly carried out, this process results in the preparation of a dried product containing less than five percent moisture. (R. p. 23)

7. Moisture in dried egg yolk is the volatile material found in the sample of dried egg yolk when examined by the method outlined in the book entitled "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, page 297, Sections 2 and 3, "Total Solids." (R. pp. 26, 27, 48)

8. The moisture present in the dried product is obtained by subtracting the figure for total solids from one hundred; and, for the reason that total solids are the basis of such calculation, it is better to fix a standard based upon a minimum total solid content, rather than upon a minimum moisture content. (R. pp. 27, 31, 46, 47, 48)

9. The minimum total solids for dried egg yolk should be not less than ninety-five percent, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, pages 297 and 298, under "Total Solids." Such a solid-content requirement corresponds to a minimum five percent moisture requirement. When properly dried, egg yolk contains less than five percent moisture. (R. pp. 25, 27, 28, 31, 46, 47)

10. Since solids and fats are not exactly related, and since solids are a practical measure of the proper limit of separation of yolks from whites, the dried product should be defined in terms of solid content of yolks used, rather than in terms of fat in the finished product. (R. p. 48)

Suggested Conclusions in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable definition and standard of identity for the food product commonly known as dried egg yolk, is hereby suggested to be promulgated as a regulation in order to promote honesty and fair dealing in the interest of consumers:

Dried Egg Yolks, Dried Yolks, are egg yolks which are dried. They contain not less than ninety-five percent total egg solids, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, pages 297 and 298, under "Total Solids."

Time Within Which To File Objections

Within ten days after the receipt by registered mail of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion and order, shall transmit such objection in writing to the Hearing Clerk. At the same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the Presiding Officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted,

[SEAL] JOHN McDILL FOX,
Presiding Officer.

APRIL 29, 1939.

[F. R. Doc. 39-1539; Filed, May 5, 1939; 1:08 p. m.]

CIVIL AERONAUTICS AUTHORITY.

[Docket No. 6-406 (A)-1]

IN THE MATTER OF THE APPLICATION OF PAN AMERICAN AIRWAYS COMPANY TO FIX AND DETERMINE FAIR AND REASONABLE RATES OF COMPENSATION FOR THE TRANSPORTATION OF MAIL BY AIRCRAFT, AND FACILITIES USED AND USEFUL THEREFOR, AND THE SERVICES CONNECTED THEREWITH, ON THE ROUTE BETWEEN SAN FRANCISCO, CALIFORNIA, AND HONG KONG

ORDER

MAY 8, 1939.

Upon recommendation of the Chief of the International Division, and by stipulation of Counsel for the Applicant and Counsel for the Economic Compliance Division, wherein it is agreed that the filing of briefs in the above-entitled matter shall be dispensed with,

It is hereby ordered, That the Oral Argument in the above-entitled matter be, and the same hereby is, set for 10:00 a. m., on Thursday, the 25th day of May 1939, in Room 5044, Department of Commerce Building, before the Authority.

By the Authority.

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 39-1566; Filed, May 9, 1939; 12:34 p. m.]

RURAL ELECTRIFICATION ADMINISTRATION.

[Administrative Order No. 341]

ALLOCATION OF FUNDS FOR LOANS

MAY 2, 1939.

By virtue of the authority vested in me by the provisions of Section 5 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for loans for the projects and in the amounts as set forth in the following schedule:

Project Designation	*Amount*
Colorado R9017W1 Prowers	$2,500
Georgia R9070R1 Mitchell	25,000
Illinois R9039W1 Fulton	18,000
Mississippi R9030W1 Jones	8,000
North Carolina R9023W5 Caldwell	17,000
Oklahoma R9019W1 Craig	8,500
Texas R9040W1 Bowie	5,000
Texas R9052W1 Fannin	3,000
Wisconsin R9048W1 Waupaca	5,000

JOHN M. CARMODY,
Administrator.

[F. R. Doc. 39-1561; Filed, May 9, 1939; 10:16 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 4th day of May, A. D. 1939.

[File No. 46-70]

IN THE MATTER OF UTILITIES POWER & LIGHT CORPORATION, LIMITED, ET AL.

ORDER GRANTING APPLICATION TO INTERVENE

Utilities Power & Light Corporation, Limited, a wholly-owned subsidiary of Utilities Power & Light Corporation, a registered holding company (presently in reorganization proceedings under Section 77B of the Bankruptcy Act, the proceedings in which are now pending in the District Court of the United States for the Northern District of Illinois, Eastern Division), and the trustee for the estate of the debtor, as intervening applicant, having filed an application, and amendments thereto, seeking an exemption under Section 9 (c) (3) of the Public Utility Holding Company Act of 1935, or, in the alternative, an order of approval under Section 10 with respect to the acquisition by the applicant, to the extent of $3,000,000, of some securities of certain associate companies; the application having been limited, by an amendment filed on April 17, 1939, to the purchase by the applicant of the outstanding Twenty Year 6% First Mortgage Sinking Fund Gold Bonds of Utilities Elkhorn Coal Company;

Utilities Elkhorn Coal Company having been represented at the hearing on the application, as amended, by its attorney, James G. Culbertson; having taken the same position with respect to this proceeding as the trustee for the estate of the debtor; having filed an application for leave to intervene as a party in this matter; and no objection having been made to the intervention;

Without passing upon the value or need for said intervention, such matter being reserved for future disposition in connection with any application by or in behalf of James G. Culbertson, attorney for Utilities Elkhorn Coal Company, for fees, expenses or remuneration in connection with any reorganization proceeding of Utilities Power & Light Corporation or Utilities Elkhorn Coal Company, the Commission grants the application of Utilities Elkhorn Coal Company, for leave to intervene as a party in this proceeding subject to all proceedings heretofore taken in this matter.

And it is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1562; Filed, May 9, 1939; 11:11 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 8th day of May, A. D. 1939.

[File No. 18-2-1]

IN THE MATTER OF A PROSPECTUS FILED BY JOHN W. WESTBROOK COMPANY AND JOHN W. WESTBROOK, TRUSTEE, RESPONDENTS, ON MARCH 1, 1939

PERMANENT SUSPENSION ORDER

The Securities and Exchange Commission having instituted this proceeding pursuant to Rule 380 (a) of the General Rules and Regulations under the Securities Act of 1933 by the entry of an order temporarily suspending the effectiveness of the filing of a prospectus relating to 2000 Units of Beneficial Interest in the "John W. Westbrook, Trustee, Three-Fourths Interest in Approximately 500 Acre Drilling Well Contract," filed with the Commission on March 1, 1939 by John W. Westbrook Company and John W. Westbrook, Trustee, the respondents herein; and

The respondents having been given due notice of the entry of the order temporarily suspending the effectiveness of the filing of said prospectus and, pursuant to Rule 380 (a), having requested a hearing thereon at Fort Worth, Texas, and the Commission having duly ordered that the matter be set for hearing at Fort Worth, Texas, and the respondents having been given due notice of the time and place thereof; and

The matter having come on regularly for hearing before a trial examiner at Fort Worth, Texas, on March 30, 1939, and the respondents appearing in person and by counsel, and evidence having been introduced, and the respondents having consented to the entry of an order permanently suspending the effectiveness of said prospectus, and the hearing having been closed on March 30, 1939; and

The Commission having duly considered the matter and finding that said prospectus is incomplete and inaccurate in material respects and omits to state material facts necessary to make the statements contained therein not misleading, and fails to comply with the requirements of Regulation B-T, all as more fully set forth in the Findings of Fact and Opinion of the Commission this day issued; and

The Commission being now fully advised in the premises and it appearing necessary and appropriate in the public interest and for the protection of investors to do so;

It is ordered, Pursuant to Rule 380 (b) of the General Rules and Regulations under the Securities Act of 1933, that the effectiveness of said prospectus be and the same hereby is permanently suspended.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1563; Filed, May 9, 1939; 11:11 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 8th day of May, A. D. 1939.

[File No. 55-3]

IN THE MATTER OF PAUL V. SHIELDS, JOSEPH S. MAXWELL AND CHARLTON B. HIBBARD, PROTECTIVE COMMITTEE PREFERRED STOCKHOLDERS OF UTILITIES POWER AND LIGHT CORPORATION

ORDER DISMISSING APPLICATION

An application pursuant to Rule U-11F-2, promulgated pursuant to Section 11 (f) of the Public Utility Holding Company Act of 1935, having been filed by Paul V. Shields, Joseph S. Maxwell and Charlton B. Hibbard, constituting a Protective Committee for Preferred Stockholders of Utilities Power and Light Corporation, for the fixing of a maximum amount for an interim allowance for the expenses of the committee from February 4, 1937, to May 10, 1938;

Motions to dismiss the application having been filed by counsel for the Commission and by Atlas Corporation;

A hearing having been held on the application after appropriate notice,[1] and oral argument having been had before the Commission, and the Commission having considered the record and the briefs filed herein and having this day entered its Findings and Opinion;

It is ordered, That said application be dismissed as premature, without prejudice to renewal of the application at a subsequent date.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1564; Filed, May 9, 1939; 11:11 a. m.]

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[1] 3 F.R. 1504 DI.